The Works of James Buchanan

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THE WORKS

OF

JAMES BUCHANAN

Comprising his Speeches, State Papers,
and Private Correspondence

Collected and Edited
By
JOHN BASSETT MOORE

VOLUME II
1830-1836

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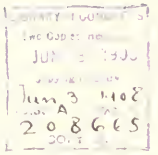
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THE WORKS

OF

JAMES BUCHANAN

REPORT, FEBRUARY 13, 1830,

ON THE BOUNDARY BETWEEN GEORGIA AND FLORIDA.[1]

February 13, 1830, Mr. Buchanan, from the Committee on the Judiciary, made to the House the following report:

The Committee on the Judiciary, to which were referred certain resolutions adopted by the Legislature of Georgia, approved the 19th December last, relative to the boundary between that State and the Territory of Florida, report:

That they have bestowed upon the subject that attentive consideration which its great importance demanded, and which is always due to any question involving the territorial limits of a sovereign State of this Union.

Before they proceed to state the result of their deliberations, it is proper that they should present a brief historical sketch of the facts, out of which the controversy between Georgia and Florida has arisen.

By the second article of the provisional treaty of peace between the United States and Great Britain, concluded at Paris, on the thirtieth day of November, one thousand seven hundred and eighty-two, it was agreed that the Southern boundary of the United States, commencing in the middle of the River Mississippi, "at the northernmost part of the thirty-first degree of north latitude," should run from thence due east "to the middle of the River Appalachicola or Chatahoochie; thence along the middle thereof to its junction with the Flint River; *thence straight to the head of St. Mary's River;* and thence down along the middle of St. Mary's River, to the Atlantic Ocean."

On the twentieth day of January, one thousand seven hun-

[1] House Reports, No. 191, 21 Cong. 1 Sess.

dred and eighty-three, Great Britain ceded East and West Florida to Spain; and by the second article of the treaty of San Lorenzo el Real, concluded on the twentieth day of October, one thousand seven hundred and ninety-five, between the United States and Spain, it was agreed that, "to prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The Southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the River Appalachicola, or Chatahoochie; thence along the middle thereof to its junction with the Flint; *thence straight to the head of St. Mary's River*, and thence down the middle thereof to the Atlantic Ocean." And it was further agreed, by the third article of the same treaty, that, "in order to carry the preceding article into effect, one Commissioner and one Surveyor shall be appointed by each of the contracting parties, who shall meet at the Natchez, on the left side of the River Mississippi, before the expiration of six months from the ratification of this convention, and they shall proceed to run and mark this boundary, according to the stipulations of the said article. They shall make plats and keep journals of their proceedings, which shall be considered as part of this convention, and shall have the same force as if they were inserted therein."

Andrew Ellicott was appointed the Commissioner under this treaty, on the part of the United States, and Don —— Minor, a Captain in the army of his Catholic Majesty, was appointed the Commissioner on the part of Spain.

Mr. Ellicott and Captain Minor, proceeded to run and mark that part of the line which ran from the Mississippi to the Chatahoochie. In September, 1799, when they were preparing to extend the line from the confluence of the Chatahoochie and Flint rivers, to the head of the St. Mary's, the hostile disposition and attempts of the Indians, compelled them to relinquish their design. As the western point of this line was the junction of two rivers, it could not be mistaken; and the commissioners knew, that, by ascertaining the head of the St. Mary's, and fixing a permanent mark upon the spot, they would thus establish the Eastern point; and that, between these two points, the line could

be run and marked at any future day. They accordingly proceeded to the mouth of the St. Mary's, and ascended that river, to the place whence it issues, from the Okefonoke swamp; and, on the 26th February, 1800, they erected a mound of earth, on the West side of its main outlet, as near to the edge of the swamp as they could advance, on account of the water. It was impossible for the commissioners to follow this stream further, for the purpose of ascertaining precisely its head, as the swamp from which it proceeds is, at all times, almost impenetrable; and particularly at the season of the year when they were there. For this reason, the commissioners agreed, that the termination of a line, supposed to be drawn North 45° East 640 perches from the mound which they had erected, should be taken as a point to or near which a line should be drawn from the mouth of Flint river; which line, when drawn, should be final, and considered as the permanent boundary between the United States and his Catholic Majesty, provided it passed not less than one mile North of the mound; but if, upon experiment, it should be found to pass within less than one mile North of the said mound, it should then be corrected to carry it to that distance.

With this arrangement Mr. Ellicott believed he had every reason to be perfectly satisfied.

The Commissioners, after erecting the mound, descended the St. Mary's and encamped on the South end of Cumberland Island, where they remained from the 6th of March, until the 10th April, 1800, occupied in preparing the report of their proceedings, to be submitted to their respective Governments. On the latter day, their reports were completed, and they left the Island.

The Committee entertain no doubt, from the testimony before them, but that this report was immediately transmitted to the office of the Secretary of State, although, it cannot at this time be found. Whether it has been mislaid or destroyed by fire is uncertain. Fortunately, however, Mr. Ellicott published his Journal in 1803, which contains all the information that could have been embraced in the report.

It may here be proper to state, that our Minister at the Court of Spain, in obedience to his instructions, addressed an official note to the Secretary of State for Foreign Affairs at Madrid, in the Spring of 1828, requesting a copy of the report of Messrs. Ellicott and Minor, to which no answer has ever yet been received at the Department of State.

From February, 1800, until the year 1817, there is no evidence that Georgia entertained any doubt of the correctness of the Commissioners in the execution of their trust. In that year, Captain William Cone, then a member of the Legislature of Georgia, represented, from his own knowledge, that Mr. Ellicott had mistaken the true head of the St. Mary's; and in consequence of this information, the Senate of that State, on the 19th December, 1818, adopted a resolution requesting the Governor thereof "to appoint two fit and proper persons to proceed, without delay, to ascertain the true head of the St. Mary's river; and, if it shall appear that the mound thrown up by Mr. Ellicott, and the Spanish Deputation, is not at the place set forth in the treaty with Spain, that they make a special report of the facts to the Governor, who shall thereupon communicate the same to the President of the United States, accompanied with a request that the lines may be run agreeable to the true intent and meaning of the aforesaid treaty." Under this resolution, His Excellency William Rabun, then the Governor of Georgia, appointed Majors General Floyd and Thompson, and Brigadier General Blackshear, Commissioners; who, after a careful examination, with Captain Cone for their guide, reported, that they found the head of the St. Mary's to agree with the report made by Mr. Ellicott. Governor Rabun, in communicating this information to the Secretary of War, in March, 1819, uses the strong expression, that the report of these Commissioners proved, "beyond the possibility of doubt, that the information received by the Legislature of this State was incorrect;" and in the same letter, he urges upon the Secretary of War the propriety of running and closing the line immediately, according to the treaty with Spain.

By the treaty concluded at Washington, on the 22d February, 1819, between the United States and Spain, East and West Florida were ceded to the United States. The ratifications of this treaty were exchanged at Washington, on the 22d February, 1821, and thenceforth East and West Florida became a territory of the United States.

The United States afterwards proceeded to sell and patent a large portion of the land, included within the present claim of Georgia; without ever suspecting that their right was doubtful, or that it would be contested.

On the 4th May, 1826, the Congress of the United States, at the request of the Delegation from Georgia, passed an act to

authorize the President of the United States to run and mark the line between Georgia and Florida. The first section of this act contains a proviso, "that the line so to be run and marked, shall be run straight from the junction of said rivers Chatahoochie and Flint, to the point designated as the head of St. Mary's river, by the Commissioners appointed under the third article of the Treaty of friendship, limits, and navigation, between the United States of America and King of Spain, made at San Lorenzo el Real, on the seven and twentieth day of October, one thousand seven hundred and ninety-five." In pursuance of this act, Thomas M. Randolph was appointed the Commissioner on the part of the United States, and Thomas Spalding the Commissioner on the part of Georgia.

In March, 1827, these commissioners, together with John McBride, a surveyor appointed on the part of Georgia, entered upon the performance of their duties, and after having nearly completed the running and marking of the line, their operations were suspended, on the 26th April, by instructions from the Governor of Georgia to Mr. Spalding, directing him to suspend the completion of the line, until it should be ascertained whether the head of the St. Mary's had been correctly determined.

After this suspension of operations, Mr. McBride received instructions from Governor Troup, dated on the 20th June, 1827, directing him "to ascertain the true head or source of the St. Mary's River," which he immediately proceeded to obey.

There are three principal branches of that river; the North, the West, and the South; and it is evident from Mr. McBride's report to the Governor of Georgia, he conceived, that, to determine the head of the St. Mary's, designated in the treaty, he had nothing to do but ascertain which of these branches was the longest and discharged the most water. Indeed, he expressly declares, that, "to ascertain the source of each of these branches, their length, and relative magnitude at their points of confluence with each other, was considered the object of my mission."

Assuming this to be the true meaning of his instructions, he reported, that he had found the South branch was longer than the North; and that, at their confluence, whilst the South branch discharged 1,369 cubic feet of water in a minute, the North branch discharged only 993 cubic feet. From these premises alone, he concludes, that the head of the South branch is "the head of the St. Mary's," referred to in the Treaty with Spain.

There is a passage in the report of Mr. McBride to the

Governor of Georgia, which the committee will transcribe into their report. In accounting for the mistake, which he supposes to have been committed by Messrs. Ellicott and Minor, he uses the following language:

The United States and Spanish Commissioners, who, in 1800, attempted to ascertain the source of the St. Mary's, in ascending the river with their canoes, passed the junction of the north and south branches, considering the former as the principal. That those commissioners should have made an erroneous determination, may be attributed to the deceptive appearance of the two branches at their confluence, and to the peculiarly unfavorable season in which their investigations were made. The channel of the north branch is wider than that of the south. Its depth is greater, and its water of a dark reddish color. At the point of disembogueement the south branch is a beautiful limpid stream, whose narrow channel and transparent water render it, apparently, one-third less than the north; but its velocity is one hundred and sixteen feet per minute, while that of the north branch is only thirty-eight. The disparity of width in these branches is accounted for by the difference of the countries in which they have their sources. That in which the south branch rises is gently undulating, and the transparency and low temperature of the water prove its origin to be principally in springs. The vicinity of the sources of the north branch is frequently an extended plane, with but little elevation or depression, which, in rainy seasons, is completely inundated for many miles; and these vast sheets of water being drained into the north branch, increase its volume to a torrent, which forms a channel much wider than the south branch. When the United States and Spanish Commissioners were here, in February, 1800, Mr. Ellicott, in his Journal, informs us that the swamps, at that season of the year, were "absolutely impenetrable," in consequence of the preceding Winter's rains. We cannot, therefore, be surprised at their failure to make a correct determination.

Should the claim of Georgia be sustained, it will take from Florida a triangular tract of land, whose base is 157 miles; its perpendicular 30 miles, and area 2,355 square miles, or 1,507,200 acres.

The committee having thus made a statement of the facts in the case, will now proceed briefly to present their views upon the subject. Georgia, for the purpose of establishing her claim, ought clearly to prove, first, that the commissioners under the

treaty of 1795 with Spain, mistook "the head of the St. Mary's," and ought, in seeking it, to have ascended to the source of the South Branch of that River instead of the north; and second, supposing the existence of such a mistake, that she has a right under the circumstances of this case, and after the lapse of more than a quarter of a century to assert her claim.

And, first, the committee are not satisfied that the commissioners under the treaty with Spain have committed any mistake. On the contrary, they think that Mr. McBride proceeded upon mistaken principles. In their opinion, "the head of the St. Mary's," designated in the treaty, was to be ascertained by the reputation of the country about the time of its date—by the common understanding of those acquainted with the stream; rather than by a geometrical admeasurement of the length of its different branches, and the volume of water emitted by each. Which is the principal branch of a River in a new country, must, in the nature of things, be decided from its appearance, and not from any actual measurement. Mr. McBride himself admits that the North Branch, even when he was there, in the midst of summer, appeared to be one third larger than the South. Its channel is much wider and considerably deeper. In order to make the discovery which Mr. McBride did, it was necessary to ascertain the relative velocity of the two streams by actual measurement. This expedient would never be resorted to, either by the first settlers or the first visitors of a new country, for the purpose of ascertaining the principal branch of a river. Their eyes would determine that question, and the name would follow the appearance.

But, in considering this subject, it ought also to be recollected that Mr. McBride made his admeasurement in the very midst of summer, at the driest season of the year. What would have been the result if the same experiment had been made at other seasons, we may conjecture from his report. He tells us, that "the disparity of width in these branches is accounted for by the difference of the countries in which they have their sources. That in which the South branch rises is gently undulating, and the transparency and low temperature of the water prove its origin to be principally in springs. The vicinity of the sources of the North Branch is frequently an extended plane, with but little elevation or depression, which, in rainy seasons, is completely inundated for many miles; and these vast sheets of water being drained into the North Branch, increase its volume to a

torrent, which forms a channel much wider than the South Branch."

There is one circumstance worthy of observation in the report of Mr. McBride. Although he sought information from every source within his power, yet, it does not appear, any person ever informed him either that the South Branch had at any time been known by the name of the St. Mary's, or that the North Branch had not been known by that name.

Governor Randolph, the Commissioner of the United States, under the Act of 1826, informs us, that "the head of St. Mary's" was known as soon as there was a settlement at its mouth. That the Indian traders crossed the North Branch about three miles below Ellicott's Mound, at what was, and still is, called the Pine Log Crossing Place, and they were always said to have come by the head of St. Mary's. On the other hand, he declares that the South Branch has always been known by the name of "the South Prong."

The testimony before the Committee presents other reasons for believing that the Commissioners under the treaty committed no mistake; but, for the sake of brevity, they will not bring them into the view of the House in this report.

The Committee will now proceed to consider, whether, under the circumstances of this case, even admitting the existence of a mistake on the part of the American and Spanish Commissioners, Georgia is not bound by their act.

There is nothing which ought to be held more sacred by nations than the boundaries of each other. An unsettled boundary always produces jealousy and discord, and often war. Vattel, when speaking on the subject of usucaption and prescription among nations, declares, "that their quarrels are of much greater consequence; their disputes are usually terminated only by bloody wars; and, consequently, the peace and happiness of mankind much more powerfully require, that possession on the part of sovereigns should not be easily disturbed; and that, if it has for a considerable length of time continued uncontested, it should be deemed just and indisputable. Were we allowed to recur to antiquity on every occasion, there are few sovereigns who could enjoy their rights in security, and there would be no peace to be hoped for on earth." The learned author is here speaking of mere possession on the one side, and tacit acquiescence on the other. This case is much stronger against the State of Georgia. It is the case of a boundary ascertained by virtue of a treaty, thirty

years ago, and not merely acquiesced in on the part of Georgia, but sanctioned by the most solemn acts of recognition, during a quarter of a century.

Georgia, as a member of the Federal Union, became a party to the treaty concluded at San Lorenzo el Real, in 1795. One of the chief objects of this treaty was to provide for running and marking the line of separation between the Spanish Colonies of East and West Florida, and the United States. It was the intention of both Governments, by this treaty, according to their own language, "to prevent all disputes on the subject of the boundaries which separate the Territories of the two high contracting parties." In order to give the proceedings of the Commissioners appointed under this treaty a more solemn sanction, it declared that the journals of their proceedings should be considered as a part of the convention itself, and should have the same force as if they were inserted therein. These Commissioners proceeded in the most public manner to perform their duties. They determined the point which should be considered the head of the St. Mary's, and erected a permanent memorial by means of which it could easily be ascertained in time to come.

The committee do not assert, that, if a clear mistake had been committed by these Commissioners, the United States and Spain would have been absolutely concluded; but they consider it very clear, that in such a case the party injured ought to complain within a reasonable time. In this case Georgia, by her silence, acquiesced in the decision of the Commissioners, until the year 1818, when she instituted an inquiry on the subject, which resulted in a solemn recognition of the accuracy of the Commissioners in ascertaining the true head of the St. Mary's. After the United States acquired East and West Florida, in 1821, they sold and patented to individual purchasers, a large proportion of the territory which Georgia now claims as her own, without a whisper of disapprobation on the part of that State. Nay, more: in 1826, on the request of her delegation, Congress passed a law, which recognized the point established by the Commissioners, as the true head of the St. Mary's; and it was not until after the line had been nearly run and marked, in pursuance of this act, that she protested against its completion, upon the ground that the Commissioners had mistaken the head of the St. Mary's. In the opinion of the committee, this protest came too late; Georgia had no right at that late day, to enforce a claim, which, if successful, would deprive Florida of a most valuable portion

of her territory, postpone her hopes of being admitted into the Union for many years, and forever destroy her prospect of becoming a powerful State. Had Florida continued to be a Spanish Province, we could not, in 1827, after the death of Mr. Ellicott, and after the head of the St. Mary's had been fixed for seven and twenty years, have asked Spain, with the least hope of success, to agree that the head of another stream should be substituted for that which had been established, and thus take from her a tract of land containing 1,500,000 acres. What we could not have demanded from Spain, we ought not to require from Florida.

Upon the whole, the committee recommend the adoption of the following resolutions:

Resolved, That the line between Georgia and Florida ought to run from the junction of the rivers Chatahoochie and Flint to the point designated as the head of the St. Mary's river by the commissioners appointed under the treaty between the United States and Spain, concluded at San Lorenzo el Real, on the 20th day of October, 1795.

Resolved, That an appropriation ought to be made, for the purpose of enabling the President of the United States, to complete the running and marking of the said line between Georgia and Florida, under the provisions of the act of the 4th May, 1826.

DEPARTMENT OF STATE,
WASHINGTON, 4th Feb. 1830.

SIR:

I was mistaken in the information which I gave you, verbally, a few days ago, that the Spanish Government had promised Mr. Everett to furnish him with a copy of the journal of the commissioners, Ellicott and Minor, for running the Southern and Southwestern boundary lines between the United States and the Spanish dominions, upon the application which he had addressed to that Government, by the orders of this Department. I find now, that Mr. Everett, by a despatch dated 1st May, 1828, acknowledged the receipt of his instructions upon this subject, and states that he lost no time in addressing an official note to the Secretary of State for Foreign Affairs, at Madrid, requesting a copy of the journal referred to: but that, up to the period of his departure from that capital, no answer was received by him to that note. I am, with great respect,

Sir, Your obedient servant,

DANIEL BRENT.

JAMES BUCHANAN, ESQ.,
House of Representatives

REMARKS, FEBRUARY 24, 1830,

ON THE INDIAN QUESTION.[1]

Mr. Buchanan said this was a subject of great importance; the more, as he had no doubt, from the nature of the numerous memorials presented to the House, that great misapprehension prevailed in the country on the subject. It was commonly believed that the Indians were to be removed from the Southern States by force; and nothing was further from the intention of Congress, or of the State of Georgia either, than this. It was right to correct the erroneous impression of the public on this subject; and he therefore moved that ten thousand additional copies of the report be printed for the use of the House.

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Mr. Buchanan rose to insist on the opinion which he had expressed, that great misapprehension existed in the country respecting this Indian question. The memorials which loaded the tables of this House proved this fact. He was satisfied that the fears of memorialists respecting the intentions of the Government, and of the State of Georgia, were totally groundless. The forcible removal of the Indians was thought, in many parts of the country, to be resolved on—a great excitement prevailed on the subject—enthusiasts have been busy in scattering firebrands and arrows throughout the country relative to this subject, calculated to create discord, to sow the seeds of disunion, and to sever brethren who ought ever to be united. It was proper the people should have information to remove the error prevalent on this subject; and who [he asked] would desire to keep such information from the people?

REMARKS, FEBRUARY 26, 1830,

ON A RESOLUTION OF INQUIRY LOOKING TO THE DIMINUTION OF THE USE OF ARDENT SPIRITS IN THE NAVY.[2]

Mr. Buchanan said that he had but one remark to make, and that was, that the practice of this House had of late wonderfully changed, and gentlemen discuss resolutions, proposing merely an inquiry, as if a bill on the subject, or the merits of the

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 1, p. 581.
[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 1, p. 589.

question, was before them. He presumed that there was no gentleman opposed to the inquiry which these resolutions proposed, and he hoped they would be permitted to pass without further debate.

REMARKS, MARCH 1, 1830.

ON THE INDIAN QUESTION.[1]

Mr. Buchanan hoped that his friend from Tennessee [Mr. Bell] would withdraw his motion to amend. Whenever this Indian question came before the House, it produced a strong excitement. For his own part, he was determined to keep himself perfectly cool, and consider it as he would any other important subject. A long and an animated debate had arisen upon the simple question of printing a memorial from the Society of Friends in New England. For his own part, ever since he had held a seat in that House, he had always voted for printing any memorial which the member who had presented thought it was proper to print, either for our own information or that of the public. He was anxious that all the light should be shed upon this subject, which we could obtain. But even if he were not so, he well knew that the attempt to prevent the printing of any memorial, served only the more to attract public attention to it, and thus give it an importance which it might not deserve. Had this motion to print prevailed, as it usually has done, without an objection, the memorial would have been quietly laid upon our tables, and there the matter would have ended. He had not read it; but, from the source from which it proceeded, it ought to be treated with respectful attention.

Mr. B. said, he could not vote for the amendment to print in mass all the memorials which had been presented to the House on the Indian question. It was wholly unnecessary. If any gentleman, however, should ask for the printing of any of them, upon his own responsibility, after having examined its contents, he should cheerfully vote with him. He would vote for printing this memorial, and trusted that the time of the House would not longer be occupied in discussing this very unimportant question.

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Mr. Buchanan said, he rose for the purpose of denying that the question to be hereafter decided by the House was of the char

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 1, pp. 593, 594.

acter which had been stated by the gentleman from Rhode Island, [Mr. Burges.] That gentleman had entirely mistaken its nature. He would not say the mistake was intentional, because he did not believe it was; but this he would say, that, unless it were corrected, it might do the same injury in misleading public opinion, as though it had been intended. Sir, [said Mr. B.] we are not about to decide, as the gentleman supposes, whether we shall change the settled policy of this country in regard to the Indians, nor whether we are about to expel them by force from the land of their forefathers. Far, very far from it. God forbid that I, or that any gentleman upon this floor, should entertain the cruel purpose of using the power of this Government to drive that unfortunate race of men by violence across the Mississippi. Where they are, there let them remain, unless they should freely consent to depart. The State of Georgia, so far as we can judge from her public acts, entertains no other intention.

The question may possibly be debated here, whether Georgia has a right to extend her laws over such Indians as reside within the limits of her sovereignty. That is a question, however, which will not either naturally or necessarily arise, upon the discussion of the bill reported by the Committee on Indian Affairs.

What is the nature of that bill? It presents the strongest inducements to the Indians to leave a land, in which, from the nature of things, they never can be happy, and rejoin that portion of their tribe which have already emigrated across the Mississippi. It proposes to them that they shall have a country and a home, guaranteed to them by the faith of the United States—by the most solemn pledges which the Government can make—where they shall be forever free from the intrusions of the white man—where, under the protection of the United States, they may be governed by their own laws and their own customs—and where the efforts of benevolence and christianity may be exerted for the purpose of elevating their moral and social condition.

And would not this be better for them, than to remain in a State, within the limits of which they have attempted to establish their own sovereign authority, in defiance of that State? Ought we not then to hold out inducements to them voluntarily to remove to this land of refuge? That is the question, and the only question which the bill will present.

REPORT, MARCH 15, 1830,

ON A PROPOSED MODIFICATION OF THE PATENT LAWS.[1]

March 15, 1830, Mr. Buchanan presented to the House the following report:

The Committee on the Judiciary, to which was referred a resolution of the House, instructing them to inquire into the expediency of so modifying the patent laws of the United States, as to enable foreigners, not resident in the United States, to sue out patents, report the following resolution:

Resolved, That it is inexpedient to make the provision proposed in the foregoing resolution.

REMARKS, MARCH 18, 1830,

ON REVOLUTIONARY PENSIONS.[2]

Mr. McDuffie then moved to amend the amendment just made, by adding to it the following proviso:

Provided also, that all applicants who shall be worth less than two hundred dollars shall receive the full amount of the pensions herein provided; and that, for every hundred dollars more than three hundred which any applicant shall be worth, six dollars shall be deducted from the annual amount of the pension to which such applicant shall be entitled.

At the suggestion of Mr. Craig, of Virginia, Mr. McDuffie modified his proposition, by changing the sum to three hundred dollars.

Mr. Buchanan said, he would oppose this amendment, for the obvious reason that it would tend to produce fraud and perjury, since it held out an encouragement, to every applicant for a pension, to reduce his property as low as three hundred dollars. It would give him six dollars per every hundred he reduced the value of his property.

Mr. McDuffie said, he was astonished that a gentleman of so much sagacity as Mr. B. did not discover that the same objection lay against the bill itself.

Mr. Buchanan replied, the only difference was, that the temptation to commit perjury was, according to his [Mr. McD.'s] proposition, sevenfold greater.

Mr. Ellsworth opposed the amendment. It was [he said] too much refined for any practical purposes.

[1] House Reports, No. 202, 21 Cong. 1 Sess.

[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 1, p. 628.

Mr. Burges also opposed it.

The question was then put, and taken by yeas and nays, and decided in the negative—124 to 56.

REPORT, MARCH 22, 1830,

ON THE CASE OF NICOLL AND CONARD.[1]

March 22, 1830, Mr. Buchanan presented to the House the following report:

The Committee on the Judiciary, to which was referred the message of the President of the United States, submitting to the consideration of the House, the memorials which had been addressed to him by Francis H. Nicoll, and John Conard, report:

That a writ of fieri facias, issued out of the Circuit Court of the United States, for the Eastern District of Pennsylvania, at the suit of the United States, against Edward Thomson, returnable to its April session, 1826, for the sum of $500,000, endorsed thereon as the real debt. This execution was placed in the hands of John Conard, the Marshal, and was by him levied upon the ships Addison and Superior, and their cargoes, as the property of Edward Thomson.

Another writ of fieri facias was issued from the District Court for the Eastern District of Pennsylvania, at the suit of the United States, against Edward Thomson, returnable to its November session, 1826, for the sum of $50,000, real debt. This execution was also placed in the hands of John Conard, the Marshal, and was by him levied upon the ships Rush and Scattergood, and their cargoes, as the property of Edward Thomson.

The property in these four vessels and their cargoes was claimed by Francis H. Nicoll, and an action of trespass was instituted by him, in the said Circuit Court, against John Conard, for seizing, taking, and detaining, the said ships and their cargoes, under the authority of the executions against Edward Thomson. This action came to trial at the October sessions, 1828, of the said Circuit Court, and after a long and elaborate investigation, judgment was entered on the verdict of the jury, on the 24th November, 1828, for the sum of $39,249.66. This judgment has been affirmed by the Supreme Court, during their present term, with costs and damages, at the rate of 6 per cent. per annum.

[1] House Reports, No. 323, 21 Cong. 1 Sess.

The committee have the authority of the present Secretary of the Treasury for declaring, that, "on information collected from the records of the Department, the proceedings which have resulted so unfavorably for the Marshal, were begun and carried on by direction of the Department, with the advice of the proper law officers, and under the sanction of the late President, in the belief that the property levied upon belonged to Edward Thomson."

Under these circumstances, the committee entertain no doubt but that relief ought to be granted to John Conard. It would be a manifest outrage on justice for this Government to direct a Marshal to seize property, on an execution issued by the United States, and then suffer him to be ruined for obeying their order.

They therefore report a bill for his relief.

REPORT, MARCH 23, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

Mr. Buchanan, from the Committee on the Judiciary, to which was referred the memorial of Luke E. Lawless, of Missouri, complaining of the conduct of James H. Peck, Judge of the District Court of the United States for the District of Missouri, made a report thereon, concluding with the opinion that the said judge ought to be impeached.

Mr. Buchanan, in presenting the above report, stated that the committee had deemed it fairest towards the party accused, not to report to the House their reasons at length for arriving at the conclusion that he ought to be impeached. In this respect, they thought it advisable to follow the precedent which had been established in the case of the impeachment of Judge Chase. Mr. B. moved to print the report and documents.[2]

The report and accompanying papers occupy fifty-three pages in the Congressional document, but the report itself occupies only a few lines, and is as follows:

That, in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion, that

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 1, p. 637.

[2] House Reports, No. 325, 21 Cong. 1 Sess. Judge Peck was on his trial by the Senate acquitted by a vote of 21 for conviction to 22 against it. The Constitution requires a two-thirds vote to convict.

James H. Peck, Judge of the District Court of the United States for the District of Missouri, be impeached of high misdemeanors in office.

REMARKS, MARCH 31, 1830,

ON THE APPROPRIATION FOR FORTIFICATIONS, ETC.[1]

An item having been inserted in the bill making appropriations for expenditures in the Engineer, Ordnance, and Quartermaster's Departments, for the addition of one hundred and fifty thousand dollars per annum to the usual sum of one hundred thousand dollars for arming fortifications, an amendment was offered to strike out the additional appropriation.

Mr. Buchanan opposed the original motion, and supported the amendment, on the ground that it was an unusual mode of legislation to introduce a new and important appropriation into a bill embracing appropriations only for carrying into effect the settled policy and authorized objects of the Government; and that this rapid arming of our fortifications must render necessary an increase of our standing army.

After an explanation from Mr. Drayton, the amendment was agreed to: yeas, 58—nays, 56.

Mr. Drayton then moved to insert an appropriation of one hundred thousand dollars.

This motion was opposed by Mr. McCoy and Mr. Buchanan, and was supported by Mr. Drayton and Mr. Mercer, and was finally negatived: yeas, 63—nays, 67.

REMARKS, APRIL 5, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[2]

Mr. Buchanan said, that, whilst he was influenced by no personal feeling in this case, he thought it was his duty to make one or two explanations in relation to some matters contained in the memorial which had just been read.

Judge Peck, in that memorial, suggests that the Committee on the Judiciary sent for such witnesses only as had been selected by Mr. Lawless. That is far from being the fact. The com-

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 722.
[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 737.

mittee acted upon higher principles. They were sensible of the high responsibility which they owed, both to this House and to the country, for the correctness of their proceedings; and had, therefore, inquired and ascertained, from the best sources in their power, the names of such witnesses as would be most likely to give an impartial and intelligent statement of the transaction. They had sent for and examined seven witnesses; and he owed it to them to say, that, although he had long been in the habit of examining witnesses in courts of justice, he had never observed, on any occasion, more candor or more impartiality than these seven gentlemen had exhibited upon their examination before the committee.

It is true, as the memorial suggests, that, in the case of Warren Hastings, the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him. But this was only a single instance. That course might have been adopted, because Mr. Burke, merely as an individual member of the House, had risen in his place, and moved the impeachment. Whether he was correct in this conjecture or not, it was certain there had been no case of an impeachment by this House, in which so much indulgence was granted, as had been allowed to the accused upon the present occasion. He was permitted to furnish the committee with a written explanation of his conduct, and his request that he might cross-examine the witnesses was promptly granted. The House will decide, when they come to review the testimony, whether he was improperly restricted in this cross-examination, or whether it has not been full and ample. He would say, that, in his opinion, this cross-examination had rather injured than benefited the Judge.

Mr. B. said, that, for his own part, he had never considered the parol testimony in this case of much importance. The opinion of the court, the commentary of Mr. Lawless upon it, which was the alleged contempt, and the record of the court imprisoning and suspending him from practice, were all in writing, and were the facts on which the committee mainly relied in forming their opinion. In that opinion they were unanimous. They felt deep regret, when they found themselves obliged to come to the conclusion which they had done; and it was with great reluctance they had recommended an impeachment to the House. In making their report, they had purposely expressed a mere naked opinion only, unaccompanied by any argument in its support. They

did not wish to bias the decision of the House by any commentary of theirs upon the testimony. All they desired was, that each member should read the testimony for himself, and draw his own conclusions from it.

REMARKS, APRIL 7, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

Mr. Buchanan said, it was not his purpose to enter into any argument in this stage of the proceeding. He felt rather in favor of the resolution which had been moved by the gentleman from Missouri, [Mr. Pettis.] He, too, had examined the British precedents, and found that in several cases the party had been admitted to the floor of the House of Commons, simply to make an argument on the testimony which had been previously given to the House. This was the utmost extent of the privilege, so far as he had examined the cases, except in a single instance—that of Warren Hastings. The gentleman, as he understood, did not now ask that new witnesses should be sent for and examined: and if the request of the accused was limited to a mere permission to make an exposition of the law, and an argument upon the facts, as they appeared in the testimony already taken, he should not have the smallest objection.

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Mr. Buchanan said, he should not suffer himself to be betrayed into any feeling by the remarks which the gentleman from Missouri had made, or by any remarks which he could make. That gentleman had very evidently betrayed his own feelings in the case. He trusted he should treat the subject temperately and calmly. As to what my opinion is, [said Mr. B.] that is contained in the report of the Judiciary Committee; nor had I ever an opinion on any subject more clear and decided. If the report "betrays" any feeling on my part, it is before the House, and before the country, and they will judge. The question now before us is this, and this only: What is the proper mode of proceeding for us to adopt? My desire is that the House may establish such a precedent as shall protect the interests of the accused in all future time. The Judiciary Committee had Judge

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, pp. 747, 748–749, 751.

Chase's trial before them. The mode of proceeding in that trial they considered as strictly proper and delicate. The committee, in that case, were directed to report their opinion on the charges against Judge Chase which had been made on the floor of the House. For the purpose of enabling them to do so, they procured all the testimony in their power. This they reported to the House, together with a simple statement of their own opinion upon it. Nothing else. And why? I presume that, as it was a judicial proceeding, they wished to leave every gentleman to decide for himself upon the naked testimony. They considered one member as competent to decide as another. Their report was referred to the Committee of the Whole on the state of the Union, and there it was fully discussed. With this precedent before us, the committee are not justly liable to the imputation of the gentleman from Tennessee, [Mr. Bell] who thought it very singular that the committee did not specify the charges, and give the grounds and reasons of their conclusion. If the Committee of the Whole on the state of the Union shall concur with the Judiciary Committee in their view of the case, then the House will appoint a committee to draught articles of impeachment, and thus present the charges in a specific form. These articles will be reported to the House, and the House will discuss and decide upon them. Until after this second decision shall have been made, the accused will not be called upon to answer. The course pursued in the case of Judge Chase gave to the party every thing he could reasonably desire.

Sir, what does Judge Peck state in this memorial? Does he allege that he had requested of the Judiciary Committee that other witnesses should be examined? This he could not state, for the fact was not so. He made no such request; and I never even suspected that he had such a wish. Had he requested it, I, for one, should have thought it a very grave question, and one that demanded the most serious consideration. It is a question on which I confess my mind is not at this time fully made up. But that is not the question before us. We are now called upon to decide whether, after Judge Peck had declined to make such a request in the committee, and after the committee have reported the testimony, and their opinion upon it, to the House, it is proper to allow him at this stage of the proceeding to make his defence and examine his witnesses either before the same committee or before the House.

Our own precedents, it is said, differ from each other; but

this is not the case, so far as they relate to proceedings against judges.

As to the case of the Vice President, he presented his own case before the House, and demanded an investigation. All cases are not necessarily subject to the same rule. One case may demand one course of proceeding, and another case require a different mode.

The remark which excited the ire of the gentleman from Missouri, was merely a response to an opinion expressed by the Judge in his memorial. I said that he had made his case rather worse than better, by his cross-examination. I am still of that opinion.

I believe the best course of proceeding in such cases, is that which the House have hitherto adopted. Give a committee charge of the complaint, and they will seek for disinterested witnesses from all sources within their power; they will inquire who is least excited? Who will be likely to give the most correct statement of facts? If they shall do this, and honestly aim at attaining the ends of public justice, without violating the rights of the accused, we shall have taken the most correct course. I am in favor of referring this whole case to the Committee of the Whole on the state of the Union. If that course shall be adopted, I shall not call up the report this day; but will endeavor to examine the precedents as well in England as in this country, and lay the result before the House.

As to the course pursued by the House of Representatives of Pennsylvania, in similar cases, which has been referred to by my colleague, [Mr. Sutherland] of hearing the defence of the accused, and examining his witnesses, before voting an impeachment, it has never met my approbation. I think I have observed great inconvenience, if not great injustice, from that mode of proceeding. It must necessarily prejudice the cause. The accused, instead of going before the Senate without prejudice, shielded by the presumption, both of law and justice, that he is innocent until he shall be proved to be guilty, will be arraigned at their bar, after having been convicted, upon a full trial, by the deliberate judgment of the House. I repeat the opinion, that the best mode of attaining justice is to entrust such complaints to a standing committee, selected from all portions of the Union; and which, from its very constitution, must almost necessarily be impartial. The members of such a committee, acting under the responsibility which they owe to the House and to the coun-

try, and clothed with the power of sending for persons and papers, will ever be careful to draw their testimony from pure fountains. After having collected from impartial sources sufficient testimony to satisfy their consciences that the accused ought to be impeached, they will then report this testimony, with their opinion, to the House, as has been done upon the present occasion, and leave each member to judge of its effect for themselves. In this manner the rights of the accused will be best protected, and the interests of justice best subserved.

If Judge Peck had insinuated, when before the committee, that the parol testimony had presented an incorrect statement of the transaction, and had asked that other witnesses might be examined, I should have felt much inclined, I confess, to grant the request. But no such request was made or intimated. We might have called on the gentleman from Missouri [Mr. Pettis] to testify, and I am sorry Judge Peck did not make the suggestion. But I protest against reflecting upon the committee, as though they had not been disposed to elicit the truth, the whole truth, and nothing but the truth.

In conclusion, I say, let a suitable precedent now be established for future times. Let it be solemnly determined whether a judge, when accused, shall be at liberty to demand that his whole cause shall be tried before the House of Representatives before an impeachment is resolved upon.

In deciding this question, I trust the House will come to such a conclusion as will best secure the rights of the people and the accused, both now and hereafter.

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[Here Mr. Buchanan explained. As reference had several times been made to what he had said on that subject, he wished to remind the committee that he had said at the time that he knew the character of the paper only from the Judge himself; it had been designated by him as a "political newspaper."]

REPORT, APRIL 12, 1830.

ON TERMS OF COURT AND COMPENSATION OF JUDGES.[1]

April 12, 1830, Mr. Buchanan, from the Committee on the Judiciary, made to the House the following report:

The Committee on the Judiciary, to which was referred the

[1] House Reports, No. 355, 21 Cong. 1 Sess.

bill from the Senate "increasing the terms of the Judicial Courts of the United States, for the Southern District of New York, and adding to the compensation of several District Judges of the United States," report the said bill, with the following amendments:

Strike from the third section of the said bill the words "thirty-five hundred," and insert, in lieu thereof, three thousand; and strike from the said section all after the words "in quarterly payments."

Strike from the bill the fourth section, and insert, in lieu thereof, the following section:

Sec. 4. And be it further enacted, That hereafter there shall be allowed to the District Judges of the United States, for the Districts of Massachusetts, Maryland, South Carolina, Georgia, Alabama, and the Eastern District of Pennsylvania, each, the yearly compensation of two thousand dollars; to the District Judge of North Carolina, the yearly compensation of sixteen hundred dollars; and to the District Judge of Vermont, the yearly compensation of one thousand dollars; to be paid at the Treasury of the United States, in quarterly payments.

REMARKS, APRIL 15, 1830,

ON THE RECONSIDERATION OF THE BUFFALO AND NEW ORLEANS ROAD BILL.[1]

Mr. Buchanan, understanding that the object was merely to get the bill laid on the table, and not to revive the discussion of it, would vote for the motion, not that he was friendly to the bill, and especially to authorizing such a road as was proposed by the bill. The decision of the House on this bill, he understood, was claimed as a victory by the opponents of internal improvements. It was not so. He himself was a friend of internal improvements, although he had voted against this bill; but he was in favor of encouraging them by distributing among the several States the surplus revenue. The bill had been rejected, because many members friendly to the principle of internal improvement thought the scheme wild and inexpedient. He repeated that he was willing, for the reason already stated, to vote for the reconsideration, although he was opposed to the passage of the bill.

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 803.

SPEECH, APRIL 21, 1830,

ON THE REPORT OF THE JUDICIARY COMMITTEE RECOMMENDING THE IMPEACHMENT OF JUDGE PECK.[1]

Mr. Buchanan, chairman of the Committee on the Judiciary, rose, and addressed the House as follows: If, said he, the Committee of the Whole on the state of the Union had been left to take up this subject simply on the report of the Judiciary Committee, I should have had, comparatively, little trouble. My task would, in that case, have been only to refer, on the one hand, to the language of the report recommending the impeachment, and, on the other, to the testimony, to show that it was sufficient to support the charge. But Judge Peck having seen fit to introduce an extensive and elaborate defence, it has become my duty to investigate the whole case more at large.

I need not, I am sure, bespeak the candid attention of the committee on the present occasion, as the dearest rights of the people of our country, on the one side, and, on the other, those of a citizen occupying a high and responsible judicial office, are deeply concerned in the investigation. Besides, we are not now called upon to decide in a purely ex parte case, as the accused has cross-examined the witnesses before the Judiciary Committee, and has presented a defence embracing a very elaborate argument, both on the law and on the fact. The consequence of this interposition of the Judge, should it not influence the committee to vote against his impeachment, must be to cause a contrary decision to bear more heavily against himself. Thus situated, it becomes us all to look well to the testimony.

What is the offence charged? It is illegal, arbitrary, and oppressive conduct, in his office as a judge, towards a citizen of the United States, by imprisoning his person, and depriving him, for the space of eighteen months, of the exercise of his profession. The Committee on the Judiciary, following former precedents, did not think it proper to reduce the charge to any

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, appended pp. 1–5. The editor of the Register of Debates printed with the speech the following note: "The revised report of the following speech of Mr. Buchanan did not reach the publishers until after the volume was printed. Although too late to insert it in its proper place, it is thought that justice to Mr. B., as chairman of the Judiciary Committee, and author of the report on Judge Peck's case, requires that the speech should not be altogether omitted, and it is therefore inserted here."

specific form in their report to the House; but its true character is what I have just stated.

I shall now proceed to inquire whether this charge is sustained by the testimony. This is a question which each gentleman must seriously consider for himself. I shall endeavor to present the material facts in as clear and distinct a manner as I am able.

Intention, in every criminal charge, is necessary to constitute guilt. Even if the act be plainly illegal, the committee must still judge whether it proceeded from improper feelings, and sprung from a bad motive. Poor frail man is left to form this judgment from external conduct. He cannot search the heart, nor penetrate the springs of human action. Still, however, he has these general principles to guide his judgment, derived from the highest authority: "out of the abundance of the heart the mouth speaketh;" and "the tree is known by its fruit." If, in addition to the illegality of the action, the committee shall be of opinion that the testimony manifests the existence of an evil intention, the case will then be fully made out. I trust I am one of the last men in this House, or in this country, who would seek, in the remotest manner, to interfere with the constitutional independence of the judiciary. I know that it is the great bulwark of our rights and liberties; and this House will never use its power of impeachment as a means of infringing upon an institution so sacred. But when an individual, elevated to the high and responsible rank of a judge, forgetting what he owes to his own dignity, to his country, and to the liberties of the people, shall, by arbitrary and oppressive conduct, prostrate the rights of a citizen of this republic, it is fit and proper that he should be held up as an example, and be made a victim to the offended majesty of the laws. It is my deliberate conviction that such has been the conduct of Judge Peck; and I may add, that similar sentiments were held by every member of the Judiciary Committee.

It was with the utmost reluctance that we found ourselves compelled to arrive at such a conclusion, and to present such a report to the House. Throughout all the stages of the examination, we endeavored to divest ourselves of every thing like feeling, and to be influenced solely by a regard to the demands of duty. I shall endeavor to do so, as far as possible, upon the present occasion, and shall now proceed to state such facts as

the evidence before the committee has clearly established. Let me briefly refer to the origin of this subject.

On the 26th May, 1824, Congress passed an act enabling claimants of land in Missouri, under French and Spanish grants made before Louisiana passed into the possession of the United States, to apply to the district court of Missouri for their confirmation. Mr. Peck then was, and still is, the sole judge of that court. On the 22d August, 1824, Antony Soulard, who had been the surveyor general of Upper Louisiana, before the cession, presented for confirmation a claim to 10,000 arpents of land, the consideration for which consisted, not in money, but in his services as surveyor general. The claim was peculiar in its character, and was founded on special circumstances belonging to itself alone. The quantity of land was greater than that of the concessions usually granted by the Spanish Government in Louisiana. Indeed, the entire case was one *sui generis;* but I shall not fatigue the committee by entering into its peculiarities. It was argued at great length by the district attorney, [Mr. Bates,] assisted by Mr. Lucas, on the part of the United States; and by Luke E. Lawless, the present complainant, and Colonel Strother, on behalf of Soulard. On the 25th December, 1825, the Judge pronounced his final decree, and gave judgment against the petitioner. Whereupon, an appeal was immediately taken to the Supreme Court of the United States—a circumstance which will be found to have a material bearing on the case now before the committee. This decree was drawn out at length, and places his decision upon grounds where the Judge ought to have suffered it to remain. This concession, according to the decree, was in opposition to the general principles upon which the Spanish authorities had granted land in Upper Louisiana, and therefore could not have been confirmed, even if the sovereignty of the country had not been transferred to the United States. Here the Judge ought to have permitted the matter to rest until after the decision of the Supreme Court of the United States; and if he had, we should never have heard of this impeachment.

It ought to be the first object of every judge to do strict and impartial justice; and his second, to satisfy the public that strict and impartial justice has been done. Judge Peck knew that a great number of these land claims, under various circumstances, derived from Spanish concessions, must come before him for decision, and that many of them were then actually pending in his court. It was natural to suppose that the population

of the country thus situated would take a deep interest in all his decisions. They had a right to expect a cool and deliberate investigation of each class of these claims, and that the Judge would approach them with candor, and hold the scales of justice even between all parties. A judge, under such circumstances, should be peculiarly cautious and prudent, and, above all, should never prejudge any case. He ought to wait until each question is fairly brought before him. But what was the course of Judge Peck? Although he had delivered no written opinion in the case of Soulard, but had confined himself to an oral explanation of the reasons of his decree, yet, in March, 1826, more than three months after final judgment had been rendered, he carried a written opinion to the editor of the Missouri Republican at St. Louis, for publication. This opinion thus, for the first time, came before the public through a political newspaper. Let it be remembered that this is not my assertion; it is that of the Judge himself, who, in his defence, uses this very phrase, when speaking of that newspaper. Now, I ask, was this not an act calculated to arouse the feelings of all that numerous class of persons in Missouri who are interested in claims of this description? What must have been their feelings, when they saw an opinion in which not only the case of Soulard, but all possible cases that could arise under these Spanish grants, were settled in anticipation against the claimants? The Judge at once deprived them of all hope. Notwithstanding his opinion decides that the Spanish ordinance of 1754 never was in force in Upper Louisiana, he proceeds to examine minutely the terms of that very ordinance, and decides against every possible claim which could have arisen under it, had it been extended to that province. In short, he tears up by the roots the claims of all persons under grants or concessions made by the subdelegate or lieutenant governor of Upper Louisiana. Now, sir, considering the existing excitement in that country on the subject, and the strong and general feeling in favor of these claims which prevails there, what must you think of such conduct? Three months after the decision of the cause, and after it had been removed from his court by appeal to the Supreme Court of the United States, he makes his appearance in this manner, in a political newspaper, and, to repeat a phrase for which I have been no little censured, he casts a firebrand into the community.

Mr. Lawless was, at this time, counsel for many of the claimants; and what was his conduct? Why, sir, he pursues a

course with which I feel I never should have been content, under similar circumstances. He writes an article, merely suggesting the errors of fact and doctrine which he believed were contained in the opinion of the Judge; an article which I must say, considering the character of this opinion, was humble, tame, and submissive. Even the Judge himself seems to have been conscious of some impropriety in his own conduct. Hear what he says in the last paragraph of his opinion:

"The title to more than a million, perhaps millions, of acres of land was supposed to depend upon the decision of the questions which have been considered; and the opinion having mainly proceeded upon a view which had not been taken at the bar, and having been extended to an inquiry into the source and nature of the Spanish titles to lands in Louisiana, and to an inquiry concerning the laws under which those titles were derived; and the decision of most of the points, therefore, having proceeded chiefly upon grounds which had been little or not at all examined in the argument of the cause, it is deemed proper to remark that counsel will not be excluded from again stirring any of the points which have been here decided, when they may hereafter arise in any other cause."

Thus, sir, you perceive that the Judge himself declares that he had made a sweeping decision which covers the whole ground, and yet that many of the points he had thus settled had not even been mooted at the bar; and, in consideration that they had thus been determined without argument, he gives public notice that they might be re-examined in court.

A judge, who pays a proper regard to his own character and the authority of his own opinions, will never, in delivering them to the public, throw out the *obiter dicta* which might embarrass him hereafter. But here Judge Peck, three months after he had delivered a verbal opinion in court, in the case of Soulard, publishes a sort of general commentary on the Spanish law as applying to the province of Upper Louisiana, by which he decides against the claimants all the questions which could possibly arise under Spanish concessions. I say all the questions, and, if there be any one which he has not virtually decided, I should be glad to hear what it is.

Mr. Lawless, being of counsel in a large number of these cases, publishes in another newspaper, the Missouri Advocate and St. Louis Inquirer, the article signed "A Citizen;" and as this publication is the foundation of the alleged contempt for

which he was so severely punished, I shall ask that it may be read by the Clerk.

[Here the article signed "A Citizen" was read accordingly.]

Now, sir, the Judge has spent many pages in proving that these strictures of Mr. Lawless are wilful misrepresentations. So far as I have examined the subject, I think that the decisions attributed by Mr. Lawless to the Judge are all to be found in the opinion. He may have been mistaken in two or three instances. But I shall not go into particulars, at least for the present. This, sir, is the dull, tame, flat article which was considered so flagrant a contempt against the court. To me it appears to have been written as if the author had throughout the fear of Judge Peck before his eyes. I do not believe there is a man in this House, who, in the like circumstances, would have written so mild and so tame an article. What motive could there have been for considering this production a contempt of court? For my soul I never could imagine, (and I believe I am as much disposed to exercise charity as other gentlemen,) unless it might have been to prevent the public from discussing the merits of the opinion in the newspapers. Here is a judge who volunteers in a public journal to proclaim his opinions on all possible points of Spanish land law; a lawyer feeling a deep interest in these opinions ventures to set up his own judgment in opposition to them; and for this offence the Judge fastens upon him, as if resolved to make him an example to all others in like case offending. Accordingly, on the third Monday of April, 1826, at the meeting of the court, the Judge, having taken his seat upon the bench, produced the Missouri Advocate, and inquired if any person present knew who was the editor of that paper. To this inquiry, which was not addressed to any particular person, Mr. Lawless answered that he did; and stated that it was Stephen W. Foreman. Now the Judge must have known the name of the editor as well as Mr. Lawless. He resided in the same town, and the name was on the paper itself, yet he called upon Mr. Lawless to swear to the fact. He was selected from all the bar and all the by-standers, and required to make this affidavit. The Judge immediately dictated a rule upon Foreman, commanding him to show cause, on the next day, at 11 o'clock, why an attachment should not issue against him for publishing a false statement concerning the judicial decision in the case of Soulard. Sir, when I was up before, I expressed

the opinion that Judge Peck had made his case worse by his cross-examination of the witnesses. From all the facts elicited by that cross-examination, it appears that the Judge had one object in his eye from the origin of these proceedings. His conduct shows that he knew Mr. Lawless to be the author of the article. He had the victim in his view from the very commencement. When Lawless appeared as the counsel of Foreman, the witnesses declare that the Judge treated him throughout as the author of the publication: that his manner was vehement, that he was much excited, and that he was sometimes quite rude. Although Lawless appeared only as counsel, the Judge constantly adverted to him as being himself the author, employing such language as this: "Sir, you say so and so," "your article states such and such things," "I tell you what you say is false."

Under all these circumstances, and under the many vexatious interruptions which he experienced, did Mr. Lawless say or do anything calculated, in the slightest degree, to cause offence? Not at all. He submitted patiently to the strictures of the court, and argued the case in the most respectful language. He endeavored to satisfy the Judge that his opinion had not been misrepresented, and that the article was neither contemptuous nor libellous; and that, even if it were libellous, the editor was protected from summary punishment by the guaranties of the constitution. Some cases were presented to the court to sustain these positions. All his pleas were overruled, and the Judge was about to pronounce judgment. At this moment, Mr. Lawless, discovering that the matter was likely to become serious, requested the editor to give up his name as the author of the article, wishing himself to meet the consequences. No sooner was this done, than the Judge issued a rule on Lawless, returnable forthwith, to show cause why an attachment should not be issued against him for contempt; and also why he should not be suspended from practice.

The witnesses declare that the feelings of the Judge continued to rise gradually until they reached the highest point of excitement. The rule against the printer had described the article signed "A Citizen" as a false statement, tending to bring odium on the court, and impair the confidence of the public in the purity of its decisions. Not satisfied with this description, the Judge denounces the article in his rule against Lawless as containing "malicious" as well as false statements, and ascribes to it an "intent to impair the public confidence in the upright intentions

of the said court, and to bring odium upon the court; and especially with intent to impress the public mind, and particularly many litigants in this court, that they are not to expect justice in the causes now pending therein; and with intent, further, to awaken hostile and angry feelings on the part of the said litigants against the said court, in contempt of the same court."

Now, who but one blinded by his passions could have given such a description of this article? Is there any gentleman within the sound of my voice, who, upon reading the commentary, will say it is, in any degree, applicable? Lawless came before the court condemned already. When his counsel attempted to prove that the article was not a contempt, they were told they would not be permitted to argue that question. The Judge would not hear a word upon that subject. He had determined it to be a contempt, and his will was the law. A citizen of the United States is thus brought before a judge upon a criminal charge involving in its punishment consequences of the most serious character, and the lips of his counsel are sealed upon the principal points of his defence. Not being permitted to present this view of the subject, they argued the remaining question with great ability, and attempted to satisfy the court that, even admitting the article to be contemptuous, it should be tried and punished in a different manner. Their arguments were all in vain.

Now comes the concluding scene, which, to my view, displays the evil intention—the improper motives of the Judge, in the clearest light. He was nearly blind and unable to read the article himself. At his request it was read by the district attorney, paragraph by paragraph, and, at the end of each, the Judge made his commentaries. He was much excited, his manner was very warm, and he was occupied two or three hours in delivering his opinion. And what was its whole tenor? Instead of the calm, dignified, and impartial manner which becomes a judge upon all occasions, and particularly when he himself is also the party, we find him heated, acrimonious, and severe. He often used the words "calumniator," "contemptuous," "slanderous," "libellous," as applied to Mr. Lawless and his article. He even forgot himself so far as to say that in China the house of such a calumniator would be painted black, as an evidence of the blackness of his heart, and as a warning that the whole world might avoid him. Throughout, Lawless uttered not a word, not a murmur, in reply. At length, able to endure the abuse no longer, after consulting his friends, he rose, and left the courthouse.

Had you, Mr. Chairman, been a member of the bar, placed in the situation of Mr. Lawless, what would have been your conduct on the occasion? Could you, with feelings lacerated and excited to frenzy, have sat silently and patiently, and heard the Judge for two or three hours uttering every odious epithet against you, and even declaring that in China your house would be painted black, as an emblem of the blackness of your heart?

At the conclusion of this scene, Mr. Lawless was sent for, and sentenced to be committed to prison for twenty-four hours, and suspended from the practice of his profession for eighteen months. He was thus, by the arbitrary mandate of the Judge, not only deprived of his personal liberty, but of the means of supporting himself and his family. And yet we are to be told that no malice, no evil intention, dictated this proceeding; that the only motive of the Judge was to preserve the administration of justice from contempt. I have stated the facts, and shall leave every gentleman to draw his own conclusions.

I admit that we ought not to impeach a judge simply because his conduct has been illegal. All must agree that this may be the case, and yet he may not deserve punishment. But illegal and oppressive proceedings, accompanied by violence of manner, by passion, and by the appearance of revenge, present a very different case, and give birth to very different conclusions.

I shall not at present permit myself to be drawn into a particular examination of the cases cited by the Judge. His case stands alone. No contempt whatever exists in the article. It is the mere opinion of a lawyer against that of a judge. From the revolution in England until this day, no case can be cited which bears any parallel to the present. If there be such a one on record in that country, I hope it may be produced.

Here I might, and perhaps ought to conclude my remarks, but it seems proper and respectful to the committee that I should state what I believe to be the law in regard to contempts of court. In England, there are two kinds of such contempt; the one direct, the other constructive. From necessity, the power to punish direct contempts in a summary manner must exist in every court of justice. Without such power, they could not proceed with their business. In its exercise, this power is generally confined to cases of official misconduct in the officers of the court, to the disobedience of parties, jurors, and witnesses, to its lawful orders and process, and to misbehavior in the face of the court, tending to obstruct the administration of justice. If a

witness shall wilfully disobey a subpœna, the court from which it is issued must, in the nature of things, possess the summary power of compelling his attendance, and punishing him for contempt, by attachment. So, if a sheriff refuse to obey an order of court, necessity requires the exercise of a similar power. If a by-stander will violate order and interrupt the court whilst transacting the business of the country, self-preservation demands that it should possess the power of summarily punishing such an offender. The Supreme Court of the United States have decided that an attempt to bribe a member of this House, although the offer were made in a letter written at a distance, is a direct contempt of its authority, and may be punished by the House with fine and imprisonment.

Constructive contempts are, in their nature, of a very different character, and, under a free Government, will ever be viewed with jealousy and suspicion. The trial of such contempts, in a summary manner, deprives the accused of the protection of a grand and of a petit jury, and often constitutes the injured party both the judge and the avenger of his own wrongs. The judge, when the object of the contempt, becomes himself the accuser, tries the offence, and punishes the offender at his own arbitrary discretion, with as heavy a fine and as long an imprisonment as he may think proper. Is not this a power in its nature revolting to every freeman? Judges do not cease to be men when elevated to the bench. They are still but frail human creatures. Is it not then a dangerous, a tremendous power to make any man the judge in his own cause of a contempt committed against himself, and under excited feelings to limit him, in the measure of the punishment, only by his own mercy and his own sense of justice? Arbitrary discretion thus takes the place of positive law.

I shall not affirm that no case exists in which the courts of the United States ought to possess the power of punishing summarily for constructive contempts. I can conceive but of one; and then this power, if it exists, is conferred upon the judge, not to enable him to avenge his own wrongs, real or imaginary, but to prevent injustice between the parties to a cause actually pending in court. If, whilst a cause is depending, particularly a case to be determined by a jury, an inflammatory publication should be made in a newspaper, touching the question to be decided, calculated to enlist public feeling in favor of the one party, or prejudice it against the other, the court may possibly, under such circumstances, inflict summary justice upon

the author. If such a power does exist in this country, it is the utmost limit. But whether it exists or not, if such had been the circumstances of the case now before the committee, I should have been the last man in this House to recommend an impeachment.

In Pennsylvania, where the courts are as much respected as in any other State of the Union, even this power has always been denied; and, in 1809, the Legislature of that State passed an act, declaring that no publication out of court, even concerning a cause depending, should be construed into a contempt, so as to render the offender liable to attachment and summary punishment. They thought it most expedient to leave the party who deemed himself injured, to proceed by indictment or action at law to obtain his redress. I have never known the least inconvenience to arise from this legislative enactment.

Long before this act had passed, the exercise of this summary power by the courts of that State, in the case of a *lis pendens*, had been made the subject of legislative investigation and impeachment. The case of Oswald occurred in 1788; and although he had been fined and imprisoned for the publication of a most inflammatory article, in relation to a cause then actually depending before the Supreme Court of Pennsylvania, the conduct of the judges became the subject of a most serious investigation by the Legislature. In the case of the Commonwealth *vs.* Passmore, which occurred in 1802, although he had been the author of a publication which on its face was clearly intended seriously to injure the character of one of the parties to a cause depending in relation to that very case, the judges of the Supreme Court were impeached, and were within three votes of being convicted by a majority of two-thirds of the Senate, for fining and imprisoning him in a summary manner for this alleged contempt. Although no man can read that publication without at once pronouncing it a direct attempt to interfere with the due course of justice, yet thirteen out of twenty-four Senators believed the sentence of the court to have been an illegal, arbitrary, and unconstitutional exercise of power, for which the judges ought to have been deprived of their offices. These cases, I presume, produced the act of 1809. From its language, it does not appear the Legislature entertained the most remote idea that any judge, when the cause was no longer pending, and after final judgment had been rendered, would attempt, as Judge Peck has done, to

punish in a summary manner any citizen who might think proper to comment upon the opinion which had been delivered.

What is the question which Judge Peck has attempted to raise in his defence? Although I deny that any facts exist in this case, out of which such a question can arise, yet it may be well to consider the nature of the power which he contends belongs to the judiciary. I never did expect to hear it seriously and gravely asserted, by a judge of the United States, before this House, that, if a libel were published against him affecting his judicial character in relation to an opinion which he had delivered upon the final decision of a cause, he could, in a summary manner, try and punish the offence according to his own discretion. If such a power exists in any case of libel, it is for the purpose of securing justice to the parties in a cause depending. When the cause is decided, the judge, in relation to it, is placed in the same situation with any other public officer, and must suffer the fate to which we are all subjected. If he feels that his general conduct and character are not a sufficient defence against attacks of the press, like every other citizen, he must seek redress by instituting a public prosecution or a private action. In such a case, he possesses no peculiar privileges. He cannot become the judge in his own cause. Will it be contended upon this floor that such an arbitrary and unconstitutional power exists in the judges? That they, in this respect, stand upon a different footing from all other public men? Why should they be made the judges of such injuries against themselves, more than the President of the United States, the members of this House, or any other high officer of the Government? What, sir! after a judge has committed his final opinion to the world, upon a great constitutional question—a question in which the rights and liberties of the people may be deeply involved, must the citizen who attacks its doctrines, even in inflammatory language, do it under the penalty of being fined and imprisoned at the arbitrary will and pleasure of the author? If such be the law, woe be to the man who shall be bold enough to hazard a free commentary upon any opinion of a tyrannical judge. Had this doctrine been established ten years ago, the distinguished individual who is now and I hope may long continue to be the Chief Justice of the United States, if the will had not been wanting, might have imprisoned many of the most distinguished patriots of the country, for severe strictures on his constitutional decisions.

It may be worthy of remark, that, if this formidable power

does exist in the judiciary, it exists without appeal. The principle is well settled, that in cases of commitment for contempt the injured party has no redress. He must endure the penalty, without the possibility of having his case reviewed by any other judicial tribunal.

One might almost suppose, from what has transpired in this case, that Judge Peck had forgotten that there was an American revolution in 1776, and that the federal constitution has guarantied to citizens of the United States some rights which are not possessed by the subjects of the Crown of England. There was a portion of his cross-examination of the witnesses of so strange a character that I could not, at the time, conceive what was his object. I shall read a few of his questions, with the answers of the witnesses. He asked, "Was it insisted in the argument that the liberty of the citizen, of speech, and of the press, would be violated by the proceeding contemplated by the rule?" A. "It was." "Was it insisted that the constitution, and the right of trial by jury, were also violated?" A. "It was." "Was the proceeding represented to be incompatible with the genius of our Government?" A. "I believe it was." His defence has cast some light upon the object of these questions. However strange it may appear, it seems he was desirous of casting even a darker shade upon his conduct, that it might more nearly resemble some English precedents, in which he alleges the liberty of the citizen, of speech, and of the press, and the right of trial by jury, had been interposed to shield the accused, and interposed in vain. Let him speak for himself. He says—

> In the present instance, although the petitioner, Mr. Lawless, has attempted to give solemnity to his complaint, by representing the freedom of the press, the right of trial by jury, and the liberty of the American citizen, to have been violated in his person, in the summary punishment for a contempt of court, inflicted on him, yet your memorialist has no fear of satisfying this honorable House, if an opportunity shall be afforded him, that these are the trite topics continually resorted to, and resorted to in vain, in Great Britain, whenever the courts of that country have found it necessary to punish summarily a contempt.

Heaven forbid that these topics should ever become trite in the United States! that they should ever lose their protecting energy!

It is, I believe, admitted, at this day, by all classes of politicians, that the sedition law was unconstitutional. What was the argument in favor of that measure? The Federal Govern-

ment, said its advocates, must necessarily possess the incidental power of protecting itself against malicious libels; an argument much stronger when applied to that Government, the two Houses of Congress, and the President of the United States, than to Judge Peck. Yet he, for the purpose of preserving his judicial dignity, claims a power which Congress could not confer upon him. If you were to pass an act to-morrow, authorizing the judge to try and punish libels, in cases between third persons, it would be a dead letter on the statute book, on account of its repugnance to the constitution. But yet he claims the power of trying and punishing such offences, even where he himself is the party. The sedition law was moderation itself, compared with this claim. Under its provisions, the accused was entitled to the benefit of a grand and petit jury, and had an opportunity of confronting the witnesses against him, face to face. In the case now before the committee, Judge Peck combined in his own person the offices of the prosecutor, the grand jury, the petit jury, and the judge; and he punished, according to his own discretion, the libel committed against himself. In such a proceeding, it is not wonderful that the guaranties of the constitution, however strong their language, should have been resorted to in vain. The constitution declares that Congress shall make no law abridging the freedom of the press; but Judge Peck punishes the exercise of this freedom, even when he himself is the party. Should the committee sanction these principles, the Judge will indeed have established that the constitution, the right of trial by jury, and the liberty of the press, are nothing better than trite topics. Need I urge this argument further?

On this floor, it is scarce necessary to refer to the English law for the purpose of showing what libels are considered contempts of court in that country. I have examined all the English authorities to which I had access, and I have not been able to find a single case in which their courts have summarily punished a libel, except in causes actually depending. Although the language of Blackstone and Lord Hardwicke is sufficiently general to embrace other cases, I doubt exceedingly whether one can be found in the books, where the doctrine was applied in practice after the cause had been decided.

From the very first sentence of the opinion of the Tennessee court, in the case of Derby, it appears that there was a cause pending. What was the particular character of that contempt,

is not stated in the opinion; and thus we are left wholly in the dark in regard to its merits.

It is hardly necessary to remind the committee that I have been arguing the question as if the publication of Mr. Lawless had been libellous against the Judge, instead of being the tame and respectful article signed "A Citizen."

I have now said all that I deem necessary. I have spoken with great pain to myself, and I fear to the committee also. Indeed, I have been scarcely able to proceed at all, as you must have perceived. Under these circumstances, I feel much indebted to the committee for their attention.

Mr. B. concluded by submitting the resolution which had been reported by the Committee on the Judiciary.

MOTION, APRIL 24, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

On motion of Mr. Buchanan,

Ordered, That —— —— be appointed a committee to go to the Senate, and at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach James H. Peck, judge of the district court of the United States for the district of Missouri, of high misdemeanors in office; and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same: and that the Senate be requested to make order for the appearance of the said James H. Peck, to make answer to the same.

The committee was ordered to consist of two members.

MESSAGE TO THE SENATE, APRIL 26, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[2]

Messrs. Buchanan and Storrs, members of the House of Representatives, with a message from that House, were announced; and, having taken the seats assigned them,

The President informed them that the Senate was ready to receive any communication they might have to make.

[1] Register of Debates, 21 Cong. 1 Sess. 1820–1830, VI., part 2, p. 819.
[2] Register of Debates, 21 Cong. 1 Sess. 1820–1830, VI., part 1, p. 383.

Mr. Buchanan then rose and said: We are commanded, in the name of the House of Representatives, and of all the people of the United States, to impeach James H. Peck, Judge of the District Court of Missouri, of high misdemeanors in office; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and we do demand that the Senate take order for the appearance of the said James H. Peck, to answer to said impeachment.

REMARKS, APRIL 27, 1830,

ON THE BILL FOR THE PUNISHMENT OF CRIMES IN THE DISTRICT OF COLUMBIA.[1]

Mr. Buchanan observed that the citizens of the District had had the bill before them for some time, and had not complained of its provisions. Formerly, cases had occurred in which crimes had been committed with a design on the part of the perpetrators to be sent to the penitentiary; but such was not the case now. Solitary confinement and hard labor were punishments sufficiently severe, to deter even slaves from the commission of offences which would subject them to such inflictions.

REPORT, APRIL 29, 1830,

OF AN ARTICLE OF IMPEACHMENT OF JUDGE PECK.[2]

Mr. Buchanan, from the committee appointed for the purpose, reported an article, to be exhibited to the Senate of the United States in behalf of themselves and of all the people of the United States, against Judge Peck, a judge of the district court of the United States for the district of Missouri, in maintenance and support of their impeachment against him. It was laid on the table and directed to be printed.

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 824.

[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 863. The article of impeachment is printed infra, under date of May 4, 1830, on its presentation to the Senate.

MOTION, APRIL 30, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

On motion of Mr. Buchanan,

Ordered, That the article of impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, be committed to the Committee of the Whole House on the state of the Union.

ACTION, MAY 1, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[2]

Mr. Buchanan moved to postpone the orders of the day, for the purpose of taking up and acting on the article of impeachment.

Mr. Whittlesey said, (this day being set apart by themselves for considering private bills,) he, as the member charged with attending to this class of business, would say, that it was perhaps inexpedient to press the consideration of many more of the numerous private bills yet on the docket, because, if they were passed, and sent to the Senate, and not acted on there, they would be in a worse situation than if they remained as they are, for the House to take them up at the next session. He should not, therefore, oppose the motion for postponement.

The House then went into Committee of the Whole, Mr. Sterigere in the chair, and took up the article of impeachment reported by the select committee against Judge Peck.

Some verbal amendments being made to the article, on motion of Mr. Buchanan,

The committee rose, and reported the article to the House; and by the House it was agreed to without objection.

Mr. Buchanan then moved that the House proceed now to the appointment of five managers, to conduct the impeachment on the part of the House of Representatives.

Mr. Williams inquired how many managers were appointed in the case of Judge Chase.

Mr. Buchanan replied that seven managers were appointed

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 866.

[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, pp. 868–869.

on that occasion, but it was thought that five were as many as were necessary for the present case.

Mr. B.'s motion being agreed to,

The House proceeded to the appointment of five managers, by ballot, when the following gentlemen received a majority of votes, and were appointed, viz.

James Buchanan, of Pennsylvania.
Henry R. Storrs, of New York.
George McDuffie, of South Carolina.
Ambrose Spencer, of New York.
Charles Wickliffe, of Kentucky.

The first four were appointed on the first ballot. Four ballots took place before a fifth manager was chosen, in all of which till the last the votes were pretty much divided between Mr. Wickliffe and Mr. Doddridge, besides whom a large number of members received more or less votes.

On motion of Mr. Buchanan, it was

Resolved, That the article agreed to by this House, to be exhibited, in the name of themselves and of all the people of the United States, against James H. Peck, in maintenance of their impeachment against him for high misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

On motion of Mr. Buchanan, it was

Resolved, That a message be sent to the Senate, to inform them that this House have appointed managers to conduct the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, and have directed the said managers to carry to the Senate the article agreed upon by this House, to be exhibited in maintenance of their impeachment against the said James H. Peck, and that the Clerk of this House do go with said message.

PRESENTATION TO THE SENATE, MAY 4, 1830,

OF ARTICLE OF IMPEACHMENT OF JUDGE PECK.[1]

HIGH COURT OF IMPEACHMENT.

The United States *vs.* James H. Peck.

Tuesday, May 4, 1830.

* * * * * * * * *

The managers on the part of the House of Representatives, viz. Messrs. Buchanan, Storrs of New York, McDuffie, Spencer and Wickliffe, appeared and were admitted: and Mr. Buchanan their chairman having announced that they were the managers instructed by the House of Representatives to exhibit a certain article of impeachment against James H. Peck, Judge of the District Court of the United States for the District of Missouri.

They were requested by the Vice-President to take seats assigned them within the bar; and the serjeant at arms was directed to make proclamation, which he did in the words heretofore prescribed.

After which the managers rose, and Mr. Buchanan, their chairman, read the article of impeachment, as follows:

ARTICLE.

Exhibited by the House of Representatives of the United States, in the name of themselves, and of all the People of the United States, against James H. Peck, Judge of the District Court of the United States for the District of Missouri, in maintenance and support of their impeachment against him for high misdemeanors in office.

ARTICLE.

That the said James H. Peck, Judge of the District Court of the United States for the District of Missouri, at a term of the said court, holden at St. Louis, in the State of Missouri, on the fourth Monday in December, one thousand eight hundred and twenty-five, did, under and by virtue of the power and authority vested in the said court, by the act of the Congress of the United States, entitled "An act enabling the claim-

[1] Stansbury's Report of the Trial of James H. Peck, 40–52. The article of impeachment is also printed in House Reports, No. 385, 21 Cong. 1 Sess.

ants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved on the twenty-sixth day of May, one thousand eight hundred and twenty-four, render a final decree of the said court in favor of the United States, and against the validity of the claim of the petitioners, in a certain manner or cause depending in the said court, under the said act, and before that time prosecuted in the said court before the said Judge, by Julie Soulard, widow of Antoine Soulard, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs at law of the said Antoine Soulard, petitioners against the United States, praying for the confirmation of their claim, under the said act, to certain lands situated in the said State of Missouri; and the said court did thereafter, on the thirtieth day of December, in the said year, adjourn to sit again on the third Monday in April, one thousand eight hundred and twenty-six.

And the said petitioners did, at the same December term of the said court, holden by and before the said James H. Peck, Judge as aforesaid, in due form of law, under the said act, appeal against the United States, from the judgment and decree so made and entered in the said matter, to the Supreme Court of the United States; of which appeal so made and taken in the said District Court, the said James H. Peck, Judge of the said court, had then and there full notice. And the said James H. Peck, after the said matter or cause had so been duly appealed to the Supreme Court of the United States, and on or about the thirtieth day of March, one thousand eight hundred and twenty-six, did cause to be published in a certain public newspaper, printed at the city of St. Louis, called "The Missouri Republican," a certain communication prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as Judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such judge, for the said decree; and that Luke Edward Lawless, a citizen of the United States, and an attorney and counsellor at law in the said District Court, and who had been of counsel for the petitioners in the said court in the matter aforesaid, did, thereafter, and on or about the eighth day of April, one thousand eight hundred and twenty-six, cause to be published in a certain other newspaper, printed at the

city of St. Louis, called "The Missouri Advocate and St. Louis Enquirer," a certain article signed "A Citizen," and purporting to contain an exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck, as before that time so published; which publication by the said Luke Edward Lawless, was to the effect following, viz:

"*To the Editor:*

Sir: I have read, with the attention which the subject deserves, the opinion of Judge Peck on the claim of the widow and heirs of Antoine Soulard, published in the Republican of the 30th ultimo. I observe that, although the Judge has thought proper to decide against the claim, he leaves the ground of his decree open for further discussion.

Availing myself, therefore, of this permission, and considering the opinion so published, to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by its operation, I beg leave to point the attention of the public to some of the principal errors which I think that I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This would require more space than a newspaper allows, and besides, is not (as regards most of the points) absolutely necessary.

Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

1st. That by the ordinance 1754, a sub-delegate was prohibited from making a grant in consideration of services rendered or to be rendered.

2d. That a sub-delegate in Louisiana was not a sub-delegate as contemplated by the above ordinance.

3d. That O'Reilly's regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the Governor General or the sub-delegates under the royal order of August, 1770.

4th. That the royal order of August, 1770, (as recited or referred to in the preamble to the regulations of Morales, of July, 1790,) related exclusively to the Governor General.

5th. That the word 'mercedes,' in the ordinance of 1754, which in the Spanish language means 'gifts,' can be narrowed by anything in that ordinance or in any other law, to the idea

of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

6th. That O'Reilly's regulations were in their terms applicable, or ever were, in fact, applied to, or published in, Upper Louisiana.

7th. That the regulations of O'Reilly have any bearing on the grant to Antoine Soulard, or that such a grant was contemplated by them.

8th. That the limitation, to a square league of grants to new settlers in Opelousas, Attakapas and Natchitoches, (in 8th article of O'Reilly's regulations) prohibits a larger grant in Upper Louisiana.

9th. That the regulations of the Governor General, Gayoso, dated 9th September, 1797, entitled 'Instructions to be observed for the admission of new settlers,' prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Soulard, which was made in 1796, and not located or surveyed until February, 1804.

10th. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself of his own regulations.

11th. That, although the regulations of Morales were not promulgated as law in Upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, 'from the official station which he held,' to have had notice, of their terms.

12th. That the regulations of Morales 'exclude all belief that any law existed under which a confirmation of the title in question could have been claimed.'

13th. That the complete titles, (produced to the court) made by the Governor General or the Intendant General, though based on *incomplete titles* not conformable to the regulations of O'Reilly, Gayoso, or Morales, afford no inference in favor of the power of the Lieutenant Governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

14th. That the language of Morales himself, in the complete titles issued by him, on concessions made by the Lieutenant Governor of Upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

15th. That the uniform practice of the sub-delegates or Lieutenant Governor of Upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom, therein.

16th. That the historical fact, that *nineteen twentieths* of the titles to lands in Upper Louisiana were not only incomplete, but not conformable to the regulations of O'Reilly, Gayoso, or Morales, at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

17th. That the fact, that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the government and population of Louisiana as property, saleable, transferable, and the subject of inheritance and distribution ab intestato, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession or of the law of nations.

18th. That the laws of Congress heretofore passed in favor of incomplete titles, furnish no argument or protecting principle in favor of those titles of a precisely similar character which remain unconfirmed.

In addition to the above, a number of other errors, consequential on those indicated, might be stated. The Judge's doctrine as to the forfeiture, which he contends is inflicted by Morales' regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the Judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel, I beg to observe, that all that I have now submitted to the public, has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

A Citizen."

And the said James H. Peck, Judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did, thereafter, at a term of the said District Court of the United States for the District of Missouri, begun

and held at the city of St. Louis, in the State of Missouri, on the third Monday in April, one thousand eight hundred and twenty-six, arbitrarily, oppressively, and unjustly, and under color and pretence that the said Luke Edward Lawless was answerable to the said court for the said publication, signed "A Citizen," as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, Judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment, issued for that purpose by the order of the said James H. Peck, as such judge, against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was, on the twenty-first day of April, one thousand eight hundred and twenty-six, arrested, imprisoned, and brought into the said court, before the said Judge, in the custody of the marshal of the said State; and the said James H. Peck, Judge, as aforesaid, did afterwards, on the same day, under the color and pretences aforesaid, and with the intent aforesaid, in the said court, then and there unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said District Court for the period of eighteen calendar months from that day; and did then and there further cause the said unjust and oppressive sentence to be carried into execution; and the said Luke Edward Lawless was, and by the order of the said James H. Peck, Judge as aforesaid, thereupon suspended from practicing as such attorney or counsellor in the said court, for the period aforesaid, and immediately committed to the common prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation or impeachment against the said James H. Peck, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other articles, accusation, or impeachment, which shall be exhibited by them as the case shall require, do

demand that the said James H. Peck may be put to answer the high misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as may be agreeable to law and justice.

A. Stevenson,
Speaker of the House of Representatives.

Attest,
M. St. Clair Clarke,
Clerk House of Reps. U. S.

REPORT, MAY 4, 1830,

OF PRESENTATION OF ARTICLE OF IMPEACHMENT TO THE SENATE.[1]

Mr. Buchanan, from the managers appointed on the part of this House to conduct the impeachment against James H. Peck, judge of the district court of the United States for the district of Missouri, reported:

"That they did, this day, carry to the Senate, then in session as a high court of impeachment, the article of impeachment agreed to by this House on the 1st instant; and that they were informed that they would take proper measures relative to the said impeachment, of which the House would be duly notified."

PROPOSED SUBSTITUTE, MAY 11, 1830,

FOR THE BILL TO AMEND THE TARIFF LAWS.[2]

Mr. Buchanan then proposed a substitute for the bill, which he had intimated, some time ago, he would offer, when in order—a substitute which [he said] was, with very little exception, not his own. He had been [he said] for some time negotiating between the Secretary of the Treasury and the chairman of the Committee on Domestic Manufactures, to agree on some effectual plan which would be mutually agreeable and acceptable to all. The result had been the bill which he now offered in lieu of the bill before the committee.

[The substitute embraces a variety of provisions for appointing assistant appraisers, &c., a correct copy of which could not be obtained.]

[1] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 872.
[2] Register of Debates, 21 Cong. 1 Sess. 1829–1830, VI., part 2, p. 964.

Mr. Buchanan followed his amendment with a number of remarks in explanation and support of the proposition, and in reference to proceedings on the tariff of 1828; which gave rise to some explanations by Mr. Cambreleng, and rejoinder by Mr. Buchanan.

MOTION, DECEMBER 10, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

On motion of Mr. Buchanan, in order to give time for the House to make the preliminary arrangements for the trial of Judge Peck, which commences in the Senate chamber at 12 o'clock on Monday next, the House agreed to meet at 11 o'clock on that day.

REPORT, DECEMBER 13, 1830,

ON THE ANSWER OF JUDGE PECK.[2]

Mr. Buchanan, on behalf of the managers appointed to conduct the impeachment against Judge James H. Peck, submitted the following report, which was agreed to:

The Committee of Managers appointed by the House of Representatives to conduct the impeachment against James H. Peck, Judge of the district court of the United States for the district of Missouri, report, that they have had under consideration the answer of Judge Peck to the article of impeachment exhibited against him by the House, and recommend the adoption of the following replication thereto:

REPLICATION

By the House of Representatives of the United States to the answer and plea of James H. Peck, Judge of the district court of the United States for the district of Missouri, to the article of impeachment exhibited against him by the said House of Representatives.

The House of Representatives of the United States having considered the answer and plea of James H. Peck, Judge of the district court of the United States for the district of Missouri,

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 354.

[2] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 354–355.

to the article of impeachment against him by them exhibited, in the name of themselves and of all the people of the United States, reply, that the said James H. Peck is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him at such convenient time and place as shall be appointed for that purpose.

Resolved, That the foregoing replication be put in to the answer and plea of the aforesaid James H. Peck, on behalf of this House; and that the managers be instructed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

RESOLUTION, DECEMBER 13, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[1]

A message was received from the Senate, informing the House that they were in their public chamber, and ready to proceed on the trial of the impeachment of James H. Peck: and that seats were provided for the accommodation of the members of the House.

Whereupon, Mr. Buchanan submitted the following resolution; which was carried, *nem. con.*

Resolved, That a message be sent to the Senate to inform them that this House have agreed to a replication on their part, to the answer and plea of James H. Peck, Judge of the district court of the United States for the district of Missouri, to the article of impeachment exhibited to the Senate against him by this House, and have directed the managers appointed to conduct the said impeachment to carry the said replication to the Senate, and to maintain the same at the bar of the Senate, at such time as shall be appointed by the Senate.

REMARKS, DECEMBER 13, 1830,

ON THE IMPEACHMENT OF JUDGE PECK.[2]

Mr. Buchanan rose, and observed, that there seemed to be a misunderstanding upon the subject. With the permission of the House he would state the course that had been pursued by the managers. They had examined all the precedents which had occurred in this country, to guide them to a correct performance of their duty. It was ascertained that, since the adoption

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 356.

[2] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 357.

of the present Constitution, there had been three impeachments, viz. those of Messrs. Blount, and Pickering, and Judge Chase. On the trial of the two first, the House did not attend in a body, but left it to the managers to conduct the impeachment; on the trial of Judge Chase, they did attend every day. It not being considered by the managers of the pending trial that any principle so important as to interrupt the legislative business of the House was involved in the present case, they had gone to the Senate this day, as managers, and presented to that body the replication agreed upon by the House. Mr. B. further remarked, that he had consulted the English precedents. On the trial of Warren Hastings, the House of Commons attended at the commencement of the trial, but they did not continue to do so. On the trial of the Earl of Macclesfield, they did not attend until his conviction by the House of Lords; and then they attended in consequence of a message having been sent them by that body, that they were ready to pronounce judgment on the impeached, if the House of Commons would attend and demand it.

Mr. B. would not advocate the attendance or non-attendance of the House at the trial which was to take place. He had felt it to be his duty to state the course which had been pursued on previous occasions of impeachment, and what had been done by the managers in the present case, and to state that his sole object was to do that which would best please the House. No motion having been made this morning on the subject, the managers had felt it to be their imperative duty to attend at the bar of the Senate, and present the replication which had been agreed upon.

PRESENTATION, DECEMBER 13, 1830,

TO THE SENATE, OF THE REPLICATION IN THE CASE OF JUDGE PECK.[1]

Mr. Buchanan, one of the managers, rose and said, that the managers, on the part of the House of Representatives, were ready to present the replication of that House, to the answer and plea of James H. Peck, judge of the District Court of the United States for the district of Missouri, to the articles of impeachment exhibited against him by that body. He then read the replication, as follows:

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 4.

"The House of Representatives of the United States, having considered the answer and plea of James H. Peck, judge of the District Court of the United States for the district of Missouri, to the article of impeachment against him, by them exhibited, in the name of themselves, and of all the People of the United States, reply, that the said James H. Peck is guilty, in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place as shall be appointed for that purpose."

The court, after some preliminary business, adjourned to Monday next, and the Senate till to-morrow.

REMARKS, DECEMBER 17, 1830,

ON THE POST OFFICE ESTABLISHMENT.[1]

Mr. Buchanan, of Pennsylvania, disclaimed any intention of entering into a discussion of the general subject, but would offer one or two words in explanation of the reasons which would induce him to vote against the amendment. Waiving the question whether this bill ought to pass or not, he objected to the amendment of the gentleman from Kentucky, Mr. Wickliffe, because it vested the Postmaster General with an absolute discretion in the application of the funds of his department, and enabled him to decide without appeal among three hundred conflicting claims for the new mail routes proposed in the bill. This confided to a single officer a weight of responsibility which pertained to Congress alone. Mr. B. said he entertained both respect and friendship for the distinguished officer at the head of the General Post Office; and as his friend, he felt unwilling to impose upon him so onerous a burden. Exercise this discretion how he might, he was sure to give great offence. Each applicant for favor would esteem his own route best entitled to preference, and there would be three or four hundred of these applicants struggling with each other for a boon which, perhaps, could be extended to but three or four individuals; the rest were sure to feel offended. What, asked Mr. B., is the duty of Congress in this matter? To put only such routes into the law as the resources of the department will enable it to meet; and between the various claims for such admission, Congress should itself decide, and not devolve its own responsibility on the head of any individual. In both these views of the subject, he felt opposed to the amendment.

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 360.

He should rather appropriate at once the sums that might be thought necessary, than entrust such a responsibility as was proposed by the gentleman from Kentucky to the head of any department.

MOTION, DECEMBER 23, 1830,

IN RELATION TO THE IMPEACHMENT OF JUDGE PECK.[1]

The hour of twelve having arrived, Mr. Buchanan rose, and said, that, as the House had determined upon attending the trial of the impeachment of Judge Peck, he would make a motion that it now go into Committee of the Whole for the purpose. He did not vote for the resolution which had been this day adopted, on the motion of the gentleman from Georgia; yet, as the House had resolved on attending the trial in the Senate, he thought that it ought to be punctual in its attendance.

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Mr. Buchanan moved that the House do now resolve itself into a Committee of the Whole, for the purpose of attending the trial of the impeachment of Judge Peck; which motion was agreed to.

1831.

REMARKS, JANUARY 4, 1831,

ON THE TRIAL OF JUDGE PECK.[2]

Mr. Johns submitted the following:

Resolved, That a message be sent by the Clerk of the House, informing the Senate that the House of Representatives decline further attendance during the trial of the impeachment of Judge Peck.

Mr. Drayton moved to add to the resolution the words, "until further notice;" which

Mr. Johns accepted as a modification of his motion.

Mr. Buchanan said that he was opposed to the phraseology of the resolution, though he was not prepared to supply, at the present moment, what he should consider to be proper. Something like this, he thought, would be correct: That notice be

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 383, 386.

[2] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 399.

sent to the Senate that the House had rescinded the resolution formerly adopted by it, by which it had agreed to attend the trial of the impeachment of Judge Peck. To send such a resolution as that proposed by the gentleman from Georgia, would be to tie up their hands. Though all along opposed to the House attending the trial, yet he thought the resolution offered an improper one. After a few further remarks, Mr. B. said that no gentleman would hereafter offer a resolution to attend the trial, unless something of interest was likely to take place. He hoped that the resolution would be amended something in the manner he had suggested.

REMARKS, JANUARY 14, FEBRUARY 9, 1831,

ON THE BILL FOR THE RELIEF OF INSOLVENT DEBTORS.[1]

[January 14.] Mr. Buchanan rose to address the House; but the Speaker said the hour for morning business had expired, and the subject must pass over for the present.

The orders of the day were then announced; when Mr. Buchanan moved that they be postponed, for the purpose of taking up the bill "for the relief of certain insolvent debtors of the United States;" he said it was a matter of great importance, and he hoped the motion might prevail.

[February 9.] Mr. Buchanan rose, and said that he was about to ask a favor of the House, which would probably be the last he should ever ask of it. It was to indulge him so much as to go into Committee of the Whole on the state of the Union, and to take up the bill for the relief of certain insolvent debtors of the United States. He had had the bill in charge for two years, and during all that time the parties interested had, with excited feelings, been looking for its passage. After a few other remarks, in which Mr. B. made a feeling appeal to the House, in favor of taking up the bill,

The House resolved itself into a Committee of the Whole, Mr. Dwight in the chair, and took up the bill.

Mr. Buchanan submitted an additional section, appropriating five thousand dollars to carry the provisions of the bill into effect; which was agreed to. The committee then rose, and reported the bill as amended.

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 510, 678.

SUBMISSION OF REPORTS, JANUARY 24-25, 1831,

ON THE BILL TO REPEAL SECTION 25 OF THE JUDICIARY ACT.[1]

[January 24.] Mr. Davis, of South Carolina, from the Committee on the Judiciary, submitted a report from the majority of that committee, on the question of repealing the 25th section of the judiciary act of 1789, accompanied by a bill "to repeal the 25th section of the judiciary act of 4th September, 1789."

Mr. Buchanan, from the same committee, was desirous to present the report of the minority of the committee; but the Speaker stated that the question must first be put on the reading of the bill.

The bill was then read a first time, and a motion made for its second reading; when

Mr. Buchanan again moved for leave to present the report of the minority of the committee; but the Chair stated that, as the House could not entertain two motions at a time, that made by the gentleman from Pennsylvania was not now in order. He could have an opportunity hereafter to present the report.

[January 25.] Mr. Buchanan addressed the House. He said the measure proposed was one of great importance, and he wished to give an opportunity for members of the House to express their opinions on it freely and fully, and that their remarks might be sent to the people. He was opposed to hasty legislation on important matters; but if the gentleman from Virginia would withdraw his opposition to the second reading, he would move to postpone the consideration of the bill to Tuesday next. Such a motion, he presumed, would not be in order now.

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Mr. Buchanan said he had no disposition, on this or any other occasion, to prevent the freest discussion of the matter before the House. It was for the purpose of assuring himself, on the contrary, that a question should be taken on this bill at the present session, that he had proposed its postponement to this day week. It would thus come up for consideration, as business of course, on that day. The bill will be, on that day, precisely in the situation in which it is at this moment. It will stand higher on the calendar than it would do were we now to refer it to a Committee of the Whole on the state of the Union. If, on that

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 532, 533.

day, it should be thought an expedient course, the bill can then be referred to a Committee of the Whole on the state of the Union, as well as now. We all know that there are many subjects referred to the Committee of the Whole on the state of the Union, and we know that there is a vast mass of lumber there too. If this subject were referred to that committee, Mr. B. said, such an expression of the opinion of this House upon it, as is due to its importance, and must be expected by the nation, would not be obtained at the present session.

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By leave of the House, Mr. Buchanan then presented the report of the minority of the Judiciary Committee against the measure proposed, and that, together with the report of the majority of the committee, were [*sic*] ordered to be printed.

REPORTS, JANUARY 24, 1831,

ON THE BILL TO REPEAL SECTION 25 OF THE JUDICIARY ACT.[1]

MR. DAVIS' MAJORITY REPORT.

January 24, 1831, Mr. Davis, of South Carolina, from the Committee on the Judiciary, made to the House the following report:

The Committee on the Judiciary, to which was referred a resolution instructing that committee to inquire into the expediency of repealing or modifying the twenty-fifth section of an act entitled "An act to establish the judicial courts of the United States," passed on the 4th September, 1789, report:

That the committee, profoundly impressed with the importance of the matter referred to their consideration, have bestowed upon it that deliberation it so eminently required; and the investigation has resulted in a solemn conviction that the twenty-fifth section of an act of Congress, entitled "An act to establish the judicial courts of the United States," passed on the 4th September, 1789, is unconstitutional, and ought to be repealed.

The reasons that have induced this opinion, the committee will now present for the consideration of the House.

The declaration of independence, the treaty of peace with Great Britain, and the articles of confederation, all announce to the world that the States of the confederacy were free, sovereign, and independent States, and that they had a right to make treaties, form alliances, and to do any other acts

[1] House Reports, No. 43, 21 Cong. 2 Sess.

that any independent sovereignty could do. In the character of sovereign States, the old confederation and the present Federal Government were alike formed and established. The defects of the old confederation, which rendered necessary the existing Federal Government, were its inability to coerce a State to contribute its quota of supplies to the general Treasury, and its want of adequate power to manage, conduct, and control our commercial and foreign relations.

It was perceived in the convention that framed the Constitution, that a federal judiciary was indispensably necessary as a co-ordinate department of the contemplated Government; and the convention accordingly, by the following clauses of that instrument, created such a department, and invested with powers therein specified.

ARTICLE III.

"Sec. 1. The *judicial power* of the United States *shall* be vested in one supreme court, and such other inferior courts as *Congress* may from time to time *ordain* and *establish*. The judges both of the supreme and *inferior* courts shall hold their offices during *good behavior*, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

"Sec. 2. The judicial power shall extend to all *cases* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and the citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects.

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make."

AMENDMENT—ARTICLE ELEVENTH.

"The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

The twenty-fifth section of the act to establish the judicial courts of the United States, is in these words:

SECTION XXV.

"A final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in a suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised

under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the Constitution; or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party under such clause of the said Constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the Supreme Court of the United States, upon a writ of error, the citation being signed by the chief justice, or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceedings upon the revisal shall, also, be the same, except that the Supreme Court, instead of remanding the cause for a final decision, as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no error shall be assigned as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the beforementioned questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute."

In the abovementioned sections, Congress gives the power of a direct appeal from a State court to the Supreme Court of the United States; but, in the opinion of the committee, the Constitution of the United States gives the right of appeal only from such inferior courts as Congress shall from time to time ordain and establish. If this opinion be wrong, then has the Supreme Court a supervisory and controlling power over twenty-four sovereign States. Before entering into a particular comparison of the above section of the judicial act of 1789 with the first and second sections of the third article of the Constitution of the United States, the committee beg leave to make a few preliminary remarks (which, it is hoped, will not be deemed impertinent to the matter referred) on the peculiar character and structure of our complex system of Government.

The most universally received maxim in the theory of political liberty, since the establishment of American independence, is, that the people alone have the right, either directly or by representative conventions, to make or alter their constitutions or forms of government; and that the Government can do neither. To preserve a Government thus formed, the division and distribution of its powers into separate departments has also been as universally admitted to be the best security. If the Government, or any department of it, be allowed to change or alter the Constitution, the essential and vital principle of *theoretical* liberty, as established here, with all its securities must inevitably be destroyed.

This great maxim ought, therefore, to be vindicated, whenever violated. It has never, it is true, been contended that the Supreme Court of the United States, or Congress, or both powers together, can alter the form of the Federal Government; but if the power claimed for the Supreme Court be submitted to, and the twenty-fifth section of the judicial act be continued as a part of the judicial system of the United States, that court will have

the power, without any possible check, to encroach upon the other political departments of the Government.

Much difficulty and embarrassment, in discussing questions of political powers and rights, arise from blending and confounding terms usually employed in expressing and describing political laws and judgments. A proper understanding of the distinction between them will always enable us to detect any attempt of the Government, or any department in it, to alter or change the Constitution. Political law is made by the *people,* to restrain *Government;* civil law is made by the *Government,* to restrain *individuals.* The former is a rule of action for the governing; the latter a rule of action for the governed.

The Supreme Court virtually claims the right, under the Constitution, to pronounce *political* judgments, and asserts the power, under the judicial act, of carrying them into execution, by coercing sovereign States. The committee readily admit that there is great difficulty in distinguishing between *political* laws and judgments, and *civil* laws and judgments, in most of the Governments of the world, but confidently believe that it was foreseen and provided for by the framers of the Federal Constitution, by the division and limitations of power we find there, between the Federal and State Governments. None deny that such a division of powers was made by the Constitution between the Federal Government and States, by the grant of specific powers to the former, and the reservation of all ungranted powers to the latter; but a great diversity of opinion has existed as to the power to which resort must be had to determine questions and controversies that might arise between the several departments of our federative system. The question is not a new one. In the great political contest in 1798 and 1799, this very question made a distinction, and marked the line of division between the two parties that then divided the country. The federal party, who were then in power, asserted that the federal court (which had just then declared and enforced as constitutional the alien and sedition laws) was the tribunal of last resort established by the Constitution, to judge of and determine questions of controversy between the departments of the Federal Government, and between the Federal Government and the States. The republican or State rights party of that day, on the contrary, denied that the judicial department of the Federal Government, or all the departments of that Government conjointly, were empowered to decide finally and authoritatively, in questions of sovereignty, *controversies* between a State and the Federal Government, and asserted and insisted that there was no common tribunal established by the Constitution for such a purpose, and that, consequently, each party had the right to judge of and determine the extent of its own rights and powers. The avowed political creed of that party was, that the Union was the result of a compact between the people of the several States, in their sovereign and corporate capacities and characters of separate and independent societies or States, and not as one entire people forming one nation. That these were the opinions and principles of the republican party of that day, is abundantly proven by Mr. Jefferson, Mr. Madison, and many other able constitutional lawyers.

The committee do not mention the names of these distinguished men for the purpose merely of using their opinions as authority for the principles they advocated, but to establish the fact that the great body of the American

people did pass upon, sanction, and adopt these principles, as forming the true theory of our Government, which was manifested by the promotion of these gentlemen to the very stations where these principles were to be tested by action and practice. As it is now a matter of unquestioned history that Mr. Jefferson penned the memorable resolutions commonly called the Kentucky resolutions, and that Mr. Madison wrote the Virginia report, the committee feel entitled to quote them as authority upon questions of constitutional law.

KENTUCKY RESOLUTIONS, PASSED NOVEMBER 10, 1798.

"*Resolved*, That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self government: and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; and to this compact each State acceded as a State, and is an integral party; that this Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

The committee beg leave to add the following extract from the same illustrious source. (Mr. Jefferson.)

"That the States of North America, which confederated to establish their independence of the Government of Great Britain, became, on that acquisition, free and independent States, and, as such, authorized to constitute Governments, each for itself, in such form as it thought best." They declared, in the second article of their first confederate Government, that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not, by this confederacy, expressly delegated to the United States in Congress assembled." "They afterwards entered into a compact, (which is called the Constitution of the United States of America,) by which they agreed to unite in a single Government, as to their relations with each other and with foreign nations, and as to certain other articles particularly specified. They retained, at the same time, each to itself, the other rights of independent government, comprehending, mainly, their domestic interests.

"For the administration of their federal branch, they agreed to appoint, in conjunction, a distinct set of functionaries, legislative, executive, and judiciary, in the manner settled in that compact; while to each, severally and of course, remained its original right of appointing, each for itself, a separate set of functionaries, legislative, executive, and judiciary, also for administering the domestic branch of their respective Governments.

"These two sets of officers, each independent of the other, constitute thus a whole of Government for each State separately—the powers ascribed

to the one, as specifically made federal, exercised over the whole—the residuary powers, retained for the other, exercisable exclusively over its particular State—foreign, herein, each to the others, as they were before the original compact."

That this is the true exposition of the powers and authorities of the Federal and State Governments, is manifested from the guarded limitation and definition of the grants of power in the compact itself, and by the contemporary discussions and comments which the Constitution underwent, which justified and recommended it on the ground that the powers not given to Government were withheld from it. But, to leave no doubt on the subject, the amendments to the Constitution expressly declare that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The committee are of opinion that the delegated powers resulting from the compact of Governments to which the States are parties, are limited by the plain sense and intention of the instrument constituting that compact, and are no further valid than they are authorized by the grants enumerated in that compact, and that it is incumbent in this, as in every other exercise of power by the Federal Government, to prove from the Constitution that it grants the particular power exercised; that, if the powers granted be valid, it is solely because they are granted, and all other powers not granted are not valid. Testing the 25th section of the act aforesaid by the foregoing principles and expositions, the committee cannot perceive any grant of power in the Constitution to warrant the enactment. That the Constitution does not confer power on the Federal Judiciary, over the judicial departments of the States, by any express grant, is certain from the fact that the State judiciaries are not once named in that instrument. On the contrary, it declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish; thus giving power to organize a judicial system capable of exercising every function to which the judicial power of the United States extended, "and intending to create a new judiciary, to exercise the judicial powers of a new Government," unconnected with, and independent of, the State judiciaries. (Mr. Madison.)

It is no more necessary to the harmonious action of the Federal and State Governments that the federal courts should have power to control the decisions of State courts by appeal, than that the Federal Legislature should have power to control the legislation of the States, or the Federal Executive a State Executive, by a negative. It cannot be that when a direct negative on the laws of a State was proposed in convention, as part of the Federal Constitution, and rejected, that it was intended to confer on the federal courts, by implication, a power subjecting their whole legislation, and their judgments and decrees on it, to this negative of the federal courts. It cannot be that this prostration of the independency of the State judicatories, this overthrow of the State Governments as co-ordinate powers, could be left to any implication of authority.

The committee are, therefore, of opinion that the power to enact the 25th section above recited is not expressed in the Constitution of the United States, nor properly an incident to any express power, and necessary to its

execution. That, if continued and acquiesced in as construed by the Supreme Court, it raises the decision of the judiciary above the authority of the sovereign parties to the Constitution; may be a warrant for the assumption of powers not delegated in the other departments, not carried by the forms of the Constitution before the judicial department; and whose decisions would be equally authoritative and final with the decisions of that department.

However, therefore, it may be admitted or denied that the judicial department of the Federal Government is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort in relation to the authorities of the other departments of that Government, it can never be authorized so to decide in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments hold their delegated trusts; on any other hypothesis, the delegation of judicial power would annul the power delegating it, and the concurrence of this department in usurped powers might subvert for ever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve. (Mr. Madison.)

"The authority of Constitutions over Governments, and the sovereignty of the people over Constitutions, are truths at all times necessary to be kept in mind;" (Mr. Madison) and it is matter of regret to the committee, that it should ever have been asserted that the Constitution, on whose face is seen so much labor to enumerate and define the several objects of federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction, the vast and multiform jurisdiction involved in the section of the law under consideration—a jurisdiction overshadowing the entire field of their legislation and adjudication, a jurisdiction that saps the foundation of the Constitution, as a system of limited and specified powers; obliterates the sovereignty of so many republics renowned for their defiance of tyranny, and whose jealous limitations of power had preserved their liberty, and secured for them a prosperity, the wonder and admiration of the world.

Nor are the committee unmindful, that, in practice, this disputed power has given rise to painful collisions in the State and federal authorities, calculated to disturb the harmony of our system, and to weaken that confidence and affection which are due to the respective Governments in the constitutional exercise of all their functions.

The committee will only add one more extract from Mr. Jefferson, which is to be found in a second series of resolutions adopted by the legislature of Kentucky the 14th November, 1700.

"That if those who administer the General Government be permitted to transgress the limits fixed by the compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments, and the erection upon their ruins of a general consolidated Government, will be the inevitable consequence: that the principle and construction contended for by sundry of the State Legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism: since the discretion of those who administer the Government, and not the Constitution, would be the measure of their powers: that the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction;

and that a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy."

The committee will now proceed to examine the provisions of the 25th section, and compare them with the powers of the federal court as conferred by the Constitution of the United States; and then submit for the consideration of the House two judicial decisions of the highest respectability, declaring the said 25th section unconstitutional.

The whole judicial power of the United States is declared by the Constitution to be vested in one Supreme Court, and in such inferior courts as Congress shall, from time to time, ordain and establish. Can Congress, by legislation, invest State courts with any portion of that power? Did the convention contemplate, in using the term appellate jurisdiction, the right and power of taking an appeal from a State court to the Supreme Court? The answers to these questions must be found in the Constitution. The Supreme Court is given original jurisdiction only in two classes of cases, to wit, in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party. The only cases in which a State can be a party are, 1st, where the controversy is between two or more States; and, 2d, where the controversy is between a State, or the citizens thereof, and foreign States. In all other cases *before mentioned,* says the Constitution, the Supreme Court shall have appellate jurisdiction. What courts have the original jurisdiction in all those cases *before mentioned* in the second section of the third article, of which the Supreme Court has only the appellate jurisdiction? Let the Constitution answer: in "such inferior courts as *Congress* shall, from time to time, ordain and establish." Is a State court an inferior court? The Constitution does not say so. If the framers of the Constitution had so considered them, and had intended the right and power of taking an appeal from their judgments to the Supreme Court, it was an easy matter, and they doubtless would have said so: their omitting to do so is proof irresistible that the power was not intended to be given. It is unreasonable to believe that they, who were so very precise and specific in the enumeration of cases and powers of infinitely less moment, would have left to implication and inference a power that breaks down all the barriers between the State and Federal Governments.

The Constitution not only invests the whole *judicial power of the United States* in two specified tribunals, but also prescribes and declares the duties, and rights, and tenure of office of the judges who shall constitute them; not one of which is applicable to the courts or judges of State courts. The courts, in the first place, must be such as are *established by Congress;* the judges must receive their appointments from the President, with the consent of the Senate; they are to hold their offices during good behavior; their compensation cannot be diminished during their continuance in office; and are made liable to be impeached and removed from office by the Senate of the United States. Such are the courts and judges that the Constitution invested with the jurisdiction of all "other cases before mentioned" in the second section of the third article of that instrument, with the exception of two classes of cases, over which original jurisdiction is given to the Supreme Court. Not one of all these requisites characterise State courts or judges.

The State courts are not established by Congress; the State judges do not receive their appointments from the President, by and with the advice and consent of the Senate; they hold their offices not necessarily during good behavior, but by such tenure as the States shall choose; their compensation may be diminished at the pleasure of the States; and they are not responsible to, or liable to be impeached before, the Senate of the United States.

The committee are aware, that, since the able and unanswerable arguments on the twenty-fifth section of the Supreme Court of Virginia, the advocates of federal power have assumed the position that the right of appeal is claimed for the federal court on the ground that the *case* arises under the laws, treaties, and Constitution of the United States, and not on the ground that the State tribunal is an inferior one, from which a writ of error would lie. The natural result of this will be, that, if the position be true, it will prove too much. If the *nature* of the *case* be the only ground of jurisdiction, will it not authorize the Supreme Court to issue a citation or writ of error to a court of England or France, on the pretext that some one of the questions arose under a treaty of the United States? A judicial tribunal of one of those places is not more independent of the federal court than is a State court, if the character of the case be the only criterion or authority for federal jurisdiction. Will it be said that the right of jurisdiction is limited by the power to enforce the mandates of the court? This being admitted will not vary the result of the present question. The federal courts have the same right to issue a mandamus, prohibition, or process of contempt, to a foreign judge, if the nature of the case can give jurisdiction, as it has to a State judge: it has also precisely the same power to execute it. If the right existed in the first case to issue and to execute process, the Supreme Court would virtually be invested with the power of declaring war: if in the latter case, that court will have the power to blot out from the map any State of the Union. If the right to issue a mandatory process to the legislative, executive, and judicial authorities of a State be admitted to belong to the federal court under the Constitution, the correlative obligation on these authorities to obey, and the rightful power to enforce it, are obvious and necessary sequents. The federal court, under these admitted principles, will have the power to prohibit State legislation by writs of injunction; to sequestrate State treasuries, and to imprison State functionaries, whether governors, judges, or State legislatures, in a body. Indeed, the power will not stop here; the same reasoning will sustain a power in the federal court to attach and imprison the President and both Houses of Congress. The power, by citation or writ of error, to take a case, after judgment, from a State court, and to remove it for final determination to the Supreme Federal Court, is a much greater outrage on the fundamental principles of theoretical and practical liberty, as established here, than the odious writ of *quo warranto*, as it was used in England by a tyrannical king to destroy the rights of corporations. The end and aim in both cases were similar. In England it was to make corporations subservient to the kingly pleasure; here to make States subservient to federal extravagance and aggrandisement.

The last argument used by advocates of federal power is, that the action

of the Federal Government will be so crippled by the repeal of the twenty-fifth section of the act of 1789, that its wholesome operations will be arrested. Although the committee will not acknowledge that such would be the necessary consequence, yet it may be admitted for the sake of argument, without changing the result.

The committee believe that it is the imperative duty of Congress to repeal, without delay, any of its acts in contravention of the Constitution, be the consequences what they may. If Congress had no power to pass such laws, they are null and void, and ought not to remain on the statute book; if such be really necessary, the power that created the Constitution can and will amend it. Necessity and expedience are the pleas of the tyrant; amendment, the dictate of the Constitution. By pursuing the former course, we trample upon the Constitution; by following the latter, we go back to the people, the original source of all power.

It has also been urged as a branch of this argument, that the 25th section is indispensable to that supremacy of the Federal Court which is required to preserve the peace of the country with foreign powers, and to render uniform all judgments in treaty cases. The answer to these objections (to the repeal of the 25th section) the committee believe to be full and perfect in the case of Hunter *vs.* Martin, and prefer presenting it in the language of the able judge who delivered it.

"I have said that this controlling power was not essential to preserve the peace of the nation. (Hunter *vs.* Fairfax, 4 Mumford.) Without going to other considerations or authorities on the subject, it is sufficient to remark that the American people have decided that it is no cause of offence to foreign nations to have their cause decided, and exclusively and finally decided, by the State tribunals. In that amendment to the Constitution by which the jurisdiction of the federal courts is prohibited in suits brought against the States by foreign citizens or subjects, this construction is most undoubted, and has never been complained of. Since the adoption of that amendment, the election of jurisdiction has been entirely taken away from foreigners in all suits against the States; and those suits can now be brought in the States' courts in exclusion of every other; and that, too, in cases in which, from the circumstance of the States themselves being parties, it might, perhaps, be plausibly urged that the judges of the State courts were not free from bias. I consider that this declaration by the American people, and which has never excited a murmur in foreign nations, has put down the notion now in question. It has settled the question for ever, that it is no cause of war to foreign nations that the State judiciaries should finally decide the causes elected to be brought therein by their subjects. It has consequently overthrown the only foundation on which the whole superstructure of the twenty-fifth section of the judicial act has been supposed to rest.

"That pretence is the only one on which the power in question could be attempted to be justified. That of rendering uniform all judgments in the case of treaties, is still less tenable, and is even not attained by the actual provisions of the judicial act. Under that act, the appeal equally lies to the Supreme Court of the United States, where such uniformity already exists, and is *denied* where it is *wanting*.

"If, for example, the Supreme Court of the United States has decided

against a treaty, and the Supreme Court of a State decides the same way, there this uniformity already exists, and yet the appeal is allowed. If, on the other hand, the former court decides against a treaty, and the latter in favor of it, this uniformity is wanting, yet the appeal is denied."

The following is the unanimous opinion of the Supreme Court of Virginia, in the above stated case.

"The court is unanimously of opinion, that the appellate power of the Supreme Court of the United States does not extend to this court, under a sound construction of the Constitution of the United States; that so much of the 25th section of the act of Congress to establish the judicial power of the United States, as extends the appellate judicial power of the Supreme Court to this court, is not in pursuance of the Constitution of the United States; and that the writ of error in this case was improvidently allowed under the authority of that act; that the proceedings thereon in the Supreme Court, were *coram non judicem*, in relation to this court, and that obedience to its mandate be declined by this court."

The committee will present one more judicial opinion of a State court against the powers contended for by the Supreme Court of the United States.

The Supreme Court of the Commonwealth of Pennsylvania, in the case of the Commonwealth *vs.* Cobbett, (3 Dallas, 473) solemnly and unanimously refused to permit the defendant, who was an alien, to remove a cause in which he was sued by the State in its Supreme Court, into a circuit court of the United States, notwithstanding the comprehensiveness of the words of the twelfth section of the judicial act. The court, after deciding in the most explicit terms that all power not granted to the Government of the United States, remained with the several States; that the federal Government was a league or treaty, made by the individual States as one party, and all the States as another; that when two nations differ as to the construction of a league or treaty existing between them, neither has the exclusive right to decide it; and that, if one of the States should differ with the United States as to the extent of the grant made to them, there is no common umpire between them, but the people, by an amendment of the Constitution; went on to declare its own opinion on the subject; and overruled the motion, on the ground that the sovereign State of Pennsylvania could not, on account of its dignity, be carried before that court. This was the solemn and unanimous decision of the Supreme Court of one of the most respectable and republican States of the Union.

The decisions of these tribunals, the committee consider of high authority and great weight; the judges who composed them were of exalted character, patriotism, learning, and ability. They had taken the same oath imposed upon the federal judges, to support the Constitution of the United States, together with the superadded obligation to maintain the Constitutions of the States whose judicial powers were confided to them.

The committee do not pretend to originality in the views and principles of this report; on the contrary, they believe they could not better discharge their duty, or render a more acceptable service to the House, than by presenting the authorities on which it is founded. Believing the section of the act referred to the consideration of the committee to be unconstitutional, they herewith report a bill to repeal the same.

MR. BUCHANAN'S MINORITY REPORT.[1]

The Committee on the Judiciary, to which was referred a resolution of the House of the 21st ult., instructing them "to inquire into the expediency of repealing or modifying the twenty-fifth section of an act entitled 'An act to establish the judicial courts of the United States,'" passed the 24th September, 1789, having made a report, accompanied by a bill to repeal the same, the minority of that committee differing in opinion from their associates upon this important question, deem it to be their duty to submit to the House the following report:

The Constitution of the United States has conferred upon Congress certain enumerated powers, and expressly authorizes that body "to make all laws which shall be necessary and proper for carrying these powers into execution." In the construction of this instrument, it has become an axiom, the truth of which cannot be controverted, that "the General Government, though limited as to its objects, is supreme with respect to those objects."

The Constitution has also conferred upon the President, "by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur," the power to make treaties.

By the second section of the 6th article of this instrument, it is declared in emphatic language, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

[1] "The most signal service rendered by Mr. Buchanan in the 21st Congress, as Chairman of the Judiciary Committee, was in a minority report made by him on the 24th of January, 1831, upon a proposition to repeal the twenty-fifth section of the judiciary act of 1789, which gave the Supreme Court appellate jurisdiction, by writ of error to the State courts, in cases where the Constitution, treaties, and laws of the United States are drawn in question. . . . Mr. Buchanan's counter-report, which had the concurrence of two other members, caused the rejection of the bill, by a vote of 138 to 51. I know of few constitutional discussions which evince a more thorough knowledge or more accurate views of the nature of our mixed system of Government than this report from the pen of Mr. Buchanan." (Curtis, Life of Buchanan, I. 110.)

The Constitution having conferred upon Congress the power of legislation over certain objects, and upon the President and Senate the power of making treaties with foreign nations, the next question which naturally presented itself to those who framed it was, in what manner it would be most proper that the Constitution itself, and the laws and the treaties made under its authority, should be carried into execution. They have decided this question in the following strong and comprehensive language: "The judicial power shall extend *to all cases*, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."—Article 3, Sec. 2. This provision is the only one which could have been made in consistency with the character of the Government established by the Constitution. It would have been a strange anomaly had that instrument established a judiciary whose powers did not embrace all the laws and all the treaties made under its authority. The symmetry of the system would thus have been destroyed; and, in many cases, Congress would have had to depend exclusively for the execution of their own laws upon the judiciary of the States. This principle would have been at war with the spirit which pervades the whole Constitution. It was clearly the intention of its framers to create a Government which should have the power of construing and executing its own laws, without any obstruction from State authority. Accordingly, we find that the judicial power of the United States extends, in express terms, "*to all cases*," in law and in equity, arising under the Constitution, the laws, and the treaties of the United States. This general language comprehends precisely what it ought to comprehend.

If the judicial power of the United States does thus extend *to all cases* arising under the Constitution, the laws, and treaties of the Union, how could this power be brought to embrace such cases without a law of Congress investing the Supreme Court with original and appellate jurisdiction where the Constitution gives it?

It was the *imperious duty* of Congress to make such a law, and it is equally its duty to continue it: indeed, without it, the judicial power of the United States is limited and restricted to such cases only as arise in the federal courts, and is never brought to bear upon numerous cases, evidently within its range.

When Congress, in the year 1780, legislated upon this subject, they knew that the State courts would often be called upon,

in the trial of causes, to give a construction to the Constitution, the treaties and laws of the United States. What then was to be done? If the decisions of the State courts should be final, the Constitution and laws of the Union might be construed to mean one thing in one State, and another thing in another State.

All uniformity in their construction would thus be destroyed. Besides, we might, if this were the case, get into serious conflicts with foreign nations, as a treaty might receive one construction in Pennsylvania, another in Virginia, and a third in New York. Some common and uniform standard of construction was absolutely necessary.

To remedy these and other inconveniences, the first Congress of the United States, composed, in a considerable proportion, of the framers of the Constitution, passed the 25th section of the judicial act of the 24th September, 1789.

It is in the following language:

Sec. 25. And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the Constitution, or a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party under such clause of the said Constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the Supreme Court of the United States, upon a writ of error, the citation being signed by the chief justice, or judge, or chancellor, of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision, as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the beforementioned questions of validity, or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute.

This section embraces three classes of cases. The first, those in which a State court should decide a law or treaty of the United

States to be void, either because it violated the Constitution of the United States, or for any other reason. Ought there not in such cases to be an appeal to the Supreme Court of the United States? Without such an appeal, the General Government might be obliged to behold its own laws, and its solemn treaties, annulled by the judiciary of every State in the Union, without the power of redress.

The second class of cases is of a different character. It embraces those causes in which the validity of State laws is contested, upon the principle that they violate the Constitution, the laws, or the treaties of the United States, and have, therefore, been enacted in opposition to the authority of the "supreme law of the land." Cases of this description have been of frequent occurrence. It has often been drawn into question before the State courts, whether State laws did or did not violate the Constitution of the U. States. Is it not then essential to the preservation of the General Government that the Supreme Court of the United States should possess the power of reviewing the judgments of State courts in all cases wherein they have established the validity of a State law, in opposition to the Constitution and laws of the U. States?

The third class differs essentially from each of the two first. In the cases embraced by it, neither the validity of acts of Congress, nor of treaties, nor of State laws, is called in question. This clause of the 25th section merely confers upon the Supreme Court the appellate jurisdiction of construing the Constitution, laws, and treaties of the United States, when their protection has been invoked by parties to suits before the State courts, and has been denied by their decision. Without the exercise of this power, in cases originating in the State courts, the Constitution, laws, and treaties of the United States would be left to be finally construed and executed by a judicial power over which Congress has no control.

This section does not interfere, either directly or indirectly, with the independence of the State courts, in finally deciding all cases arising exclusively under their own Constitution and laws. It leaves them in the enjoyment of every power which they possessed before the adoption of the Federal Constitution. It merely declares, that, as that Constitution established a new form of Government, and consequently gave to the State courts the power of construing, in certain cases, the Constitution, the laws, and the treaties of the United States, the Supreme Court of the United

States should, to this limited extent, but not beyond it, possess the power of reviewing their judgments. The section itself declares that "no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record, *and immediately respects the before-mentioned questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute.*"

The minority of the committee will now proceed to advance, in a more distinct form, a few of the reasons why, in their opinion, the 25th section of this act ought not to be repealed.

And, in the first place, it ought to be the chief object of all Governments to protect individual rights. In almost every case, involving a question before a State court under this section of the judiciary act, the Constitution, laws, or treaties of the United States are interposed for the protection of individuals. Does a citizen invoke the protection of an act of Congress upon a trial before a State court, which decides that act to be unconstitutional and void, and renders judgment against him? This section secures his right of appeal from such a decision to the Supreme Court of the United States.

When a citizen, in a suit before a State court, contends that a State law, by which he is assailed, is a violation of the Constitution of the United States, and therefore void, (if his plea should be overruled,) he may bring this question before the Supreme Court of the United States.

In like manner, when an individual claims any right before a State court under the Constitution or laws of the United States, and the decision is against his claim, he may appeal to the Supreme Court of the United States.

If this section were repealed, all these important individual rights would be forfeited.

The history of our country abundantly proves that individual States are liable to high excitements and strong prejudices. The judges of these States would be more or less than men if they did not participate in the feelings of the community by which they are surrounded. Under the influence of these excitements, individuals, whose rights happen to clash with the prevailing feeling of the State, would have but a slender hope of obtaining justice before a State tribunal. There would be the power and the influence of the State sovereignty on the one side, and an individual who had made himself obnoxious to popular odium

on the other. In such cases, ought the liberty or the property of a citizen, so far as he claims the same under the Constitution or laws of the United States, to be finally decided before a State court, without an appeal to the Supreme Court of the United States, on whom the construction of this very Constitution and these laws has been conferred, *in all cases*, by the Constitution?

The Supreme Court, considering the elevated character of its judges, and that they reside in parts of the Union remote from each other, can never be liable to local excitements and local prejudices. To that tribunal our citizens can appeal with safety and with confidence, (as long as the 25th section of the judicial act shall remain upon the statute book,) whenever they consider that their rights, under the Constitution and laws of the United States, have been violated by a State court. Besides, should this section be repealed, it would produce a denial of equal justice to parties drawing in question the Constitution, laws, or treaties of the United States.

In civil actions, the plaintiff might then bring his action in a federal or State court, as he pleased, and as he thought he should be most likely to succeed; whilst the defendant would have no option, but must abide the consequences, without the power of removing the cause from a State into a federal court, except in the single case of his being sued out of the district in which he resides; and this, although he might have a conclusive defence under the Constitution and laws of the United States.

Another reason for preserving this section is, that, without it, there would be no uniformity in the construction and administration of the Constitution, laws, and treaties of the United States. If the courts of twenty-four distinct, sovereign States each possess the power, in the last resort, of deciding upon the Constitution and laws of the United States, their construction may be different in every State of the Union. That act of Congress which conforms to the Constitution of the United States, and is valid, in the opinion of the Supreme Court of Georgia, may be a direct violation of the provisions of that instrument, and be void, in the judgment of the Supreme Court of South Carolina. A State law in Virginia might in this manner be declared constitutional, whilst the same law, if passed by the Legislature of Pennsylvania, would be void. Nay, what would be still more absurd, a law or treaty of the United States with a foreign nation, admitted to be constitutionally made, might secure rights to the citizens of one State, which would be denied to those of another. Although the same

Constitution and laws govern the Union, yet the rights acquired under them would vary with every degree of latitude. Surely the framers of the Constitution would have left their work incomplete, had they established no common tribunal to decide its own construction, and that of the laws and treaties made under its authority. They are not liable to this charge, because they have given express power to the judiciary of the Union over "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

The first Congress of the United States have, to a considerable extent, carried this power into execution by the passage of the judicial act; and it contains no provision more important than the 25th section.

This section ought not to be repealed, because, in the opinion of the minority of the Committee on the Judiciary, its repeal would seriously endanger the existence of this Union. The chief evil which existed under the old confederation, and which gave birth to the present Constitution, was, that the General Government could not act directly upon the people, but only by requisition upon sovereign States. The consequence was, that the States either obeyed or disobeyed these requisitions, as they thought proper. The present Constitution was intended to enable the Government of the United States to act immediately upon the people of the States, and to carry its own laws into full execution, by virtue of its own authority. If this section were repealed, the General Government would be deprived of the power, by means of its own judiciary, to give effect either to the Constitution which called it into existence, or to the laws and treaties made under its authority. It would be compelled to submit, in many important cases, to the decisions of the State courts, and thus the very evil which the present Constitution was intended to prevent would be entailed upon the people. The judiciary of the States might refuse to carry into effect the laws of the United States; and without that appeal to the Supreme Court which the 25th section authorizes, these laws would thus be entirely annulled, and could not be executed without a resort to force.

This position may be illustrated by a few striking examples. Suppose the legislature of one of the States, believing the tariff laws to be unconstitutional, should determine that they ought not to be executed within its limits. They accordingly pass a law, imposing the severest penalties upon the collector and other cus-

tom house officers of the United States within their territory, if they should collect the duties on the importation of foreign merchandise. The collector proceeds to discharge the duties of his office under the laws of the United States, and he is condemned and punished before a State court, for violating this State law. Repeal this section, and the decision of the State court would be final and conclusive; and any State could thus nullify any act of Congress which she deemed to be unconstitutional.

The Executive of one of the States, in a message to the legislature, has declared it to be his opinion, that the land belonging to the United States within her territory is now the property of the State, by virtue of her sovereign authority. Should the legislature be of the same opinion, and pass a law for the punishment of the land officers of the United States who should sell any of the public lands within her limits, this transfer of property might be virtually accomplished by the repeal of the 25th section of the judicial act. Our land officers might then be severely punished, and thus prohibited by the courts of that State from performing their duty under the laws of the Union, without the possibility of redress in any constitutional or legal form. In this manner, the title of the United States to a vast domain, which has cost the nation many millions, and which justly belongs to the people of the several States, would be defeated or greatly impaired.

Another illustration might be introduced. Suppose the Legislature of Pennsylvania, being of opinion that the charter of the Bank of the United States is unconstitutional, were to declare it to be a nuisance, and inflict penalties upon all its officers for making discounts or receiving deposits. Should the courts of that State carry a law into effect, without the 25th section, there would be no appeal from their decision; and the legislature and courts of a single State might thus prostrate an institution established under the Constitution and laws of the United States.

In all such cases, redress can now be peaceably obtained in the ordinary administration of justice. A writ of error issues from the Supreme Court, which finally decides the question whether the act of Congress was constitutional or not; and if they determine in the affirmative, the judgment of the State court is reversed. The laws are thus substituted instead of arms, and the States kept within their proper orbits by the judicial authority. But if no such appeal existed, then, upon the occurrence of cases of this character, the General Government would be compelled to

determine whether the Union should be dissolved, or whether there should be a recurrence to force—an awful alternative, which we trust may never be presented. We will not attempt further to portray the evils which might result from the abandonment of the present judicial system. They will strike every reflecting mind.

It has of late years been contended that this section of the judicial act was unconstitutional, and that Congress do not possess the power of investing the Supreme Court with appellate jurisdiction in any case which has been finally decided in the courts of the States. It has also been contended, that, even if they do possess this power, it does not extend to cases in which a State is a party. On this branch of the question we would refer the House to the very able and conclusive argument of the Supreme Court of the United States in the cases of Martin *vs.* Hunter's lessee, (1st Wheaton, 304,) and Cohens *vs.* the State of Virginia, (6 Wheaton, 264,) by which the affirmative of these propositions is clearly established. It may be proper, however, that we should make a few observations upon this part of the question. Those who have argued in favor of these positions assert that the general words of the Constitution, extending the judicial power of the Union "to all cases, in law and equity," arising under the Constitution and laws of the United States, ought, by construction, to be restricted to such cases, in law and equity, as may originate in the courts of the Union. They would thus establish a limitation at war with the letter, and, in our opinion, equally at war with the spirit of the instrument. Had such been the intention of the framers of the Constitution, they well knew in what language to express that intention. Had it been their purpose to restrict the meaning of the general language which they had used in the first clause of the section, they could have done so with much propriety in the second. This clause, after providing "that, in all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction," proceeds to declare "that, in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." On the supposition contended for, it is wholly unaccountable that the framers of the Constitution did not limit the natural effect of the words used in the first clause, by making the second to read "that, in all the other cases before

mentioned," *arising in the inferior courts of the United States,* "the Supreme Court shall have appellate jurisdiction." But no such restriction exists; and, from the fair import of the words used in both clauses, the Supreme Court possess the power of finally deciding "all cases, in law and equity," arising under the Constitution, the laws, and the treaties of the United States, no matter whether they may have originated in a federal or in a State court, and no matter whether States or individuals be the parties.

But it is not our intention to enter into a protracted constitutional argument upon the present occasion, because this question has long since been put at rest, if any constitutional question can ever be considered as settled in this country. The Federalist, which is now considered a text book in regard to the construction of the Constitution, and deservedly so, as well from the great merit of the work as the high character of its authors, is clear and explicit on this subject. After reasoning upon it at some length, the author of the 83d number of that production arrives at the following conclusion: "To confine, therefore, the general expressions which gave appellate jurisdiction to the Supreme Court to appeals from the subordinate federal courts, instead of allowing their extension to the State courts, would be to abridge the latitude of the terms, in subversion of the intent, contrary to every sound rule of interpretation."

The Federalist, it will be recollected, was written between the formation of the Constitution and its adoption by the States. Immediately after its adoption, Congress, by passing the 25th section of the judicial act, now sought to be repealed, fully confirmed this construction. This appellate jurisdiction has ever since been exercised by the Supreme Court in a great variety of cases; and we are not aware that the constitutionality of its exercise has ever been questioned by the decision of any State court, except in a single instance, which did not occur until the year 1815; and even in that case, (Hunter *vs.* Fairfax,) the judgment of the Supreme Court was carried into effect according to the existing law, without endangering the peace of the country.

The last topic to which we would advert, is the claim which has been set up to exempt the judgments obtained by the States of this Union, before their own courts, in civil and criminal suits, prosecuted in their name, from being reviewed by the Supreme Court of the United States upon a writ of error. Much stress has been laid by those who sustain this claim, upon the general proposition, that a sovereign, independent State cannot be sued,

except by its own consent. But does this proposition apply, in its extent, to the States of this Union? That is the question for discussion.

We have in this country an authority much higher than that of sovereign States. It is the authority of the sovereign people of each State. In their State conventions, they ratified the Constitution of the United States; and so far as that Constitution has deprived the States of any of the attributes of sovereignty, they are bound by it, because such was the will of the people. The Constitution thus called into existence by the will of the people of the several States, has declared *itself*, and the laws and treaties which should emanate from its authority, to be "the supreme law of the land;" and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

Why, then, should a State, who has obtained a judgment in her own courts against an individual, in violation of this "supreme law of the land," be protected from having her judgment reversed by the Supreme Court of the United States? Is there any reason, either in the Constitution, or in natural justice, why judgments obtained by a State in her own courts should be held sacred, notwithstanding they violated the Constitution and laws of the Union, which would not apply, at least with equal force, in favor of individual plaintiffs? The Constitution subjects to the review of the Supreme Court all cases, in law or equity, arising under itself or the laws of the Union. It excepts no case bearing this character. Whether the party be a State or an individual, all must alike bow to the sovereign will of the people, expressed in the Constitution of the United States.

In suits brought by a State against an individual in her own courts, there is much greater danger of oppression, considering the relative power and influence of the parties, than there would be in controversies between individuals. And are these to be the only cases selected, in which the citizen shall not be permitted to protect himself by the Constitution and laws of the Union before the Supreme Court of the United States? Is it not sufficient that, under the Constitution, the States cannot be sued as defendants, without adding to this, by a strained and unnatural construction, the additional privilege that the judgments which they may obtain as plaintiffs or prosecutors before their own courts, whether right or wrong, shall in all cases be irreversible?

We will not repeat the considerations which have been

already urged to prove that, unless this provision of the Constitution applies to the States, the rights of individuals will be sacrificed, all uniformity of decision abandoned, and each one of the States will have it in her power to set the Constitution and laws of the United States at defiance.

The eleventh amendment to the Constitution of the United States interferes in no respect with the principles for which we have contended. It is in these words: "The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

Chief Justice Marshall, in delivering the opinion of the court in the case of Cohens *vs.* Virginia, has given so clear, and, in our opinion, so correct an exposition of the true construction of the amendment, that we shall, in conclusion, present to the House a few extracts from that opinion, instead of any argument of our own. He says that "the first impression made on the mind made by this amendment is, that it was intended for those cases, and for those only, in which some demand against a State is made by an individual in the courts of the Union. If we consider the causes to which it is to be traced, we are conducted to the same conclusion. A general interest might well be felt in leaving to a State the full power of consulting its convenience in the adjustment of its debts, or of other claims upon it; but no interest could be felt in so changing the relations between the whole and its parts, as to strip the Government of the means of protecting, by the instrumentality of its courts, the Constitution and laws from active violation. The words of the amendment appear to the court to justify and require this construction."

"To commence a suit, is to demand something by the institution of process in a court of justice; and to prosecute the suit, is, according to the common acceptation of language, to continue that demand. By a suit commenced by an individual against a State, we should understand process sued out by that individual against a State, for the purpose of establishing some claim against it by the judgment of a court; and the prosecution of that suit is its continuance. Whatever may be the stages of its progress, the actor is still the same. Suits had been commenced in the Supreme Court against some of the States before the amendment was introduced into Congress, and others might be commenced before it should be adopted by the State legislatures, and might be

depending at the time of its adoption. The object of the amendment was not only to prevent the commencement of future suits, but to arrest the prosecution of those which might be commenced when this article should form a part of the Constitution. It, therefore, embraces both objects; and its meaning is, that the judicial power shall not be construed to extend to any suit which may be commenced, or which, if already commenced, may be prosecuted against a State by the citizen of another State. If a suit, brought in one court, and carried by legal process to a supervising court, be a continuation of the same suit, then this suit is not commenced nor prosecuted against a State. It is clearly, in its commencement, the suit of a State against an individual, which suit is transferred to this court, not for the purpose of asserting any claim against the State, but for the purpose of asserting a constitutional defence against a claim made by a State."

"Under the judiciary act, the effect of a writ of error is simply to bring the record into court, and submit the judgment of the inferior tribunal to re-examination. It does not, in any manner, act upon the parties; it acts only on the record. It removes the record into the supervising tribunal. Where, then, a State obtains a judgment against an individual, and the court rendering such judgment overrules a defence set up under the Constitution or laws of the United States, the transfer of this record into the Supreme Court, for the sole purpose of inquiring whether the judgment violates the Constitution or laws of the United States, can, with no propriety, we think, be denominated a suit commenced or prosecuted against the State whose judgment is so far re-examined. Nothing is demanded from the State. No claim against it, of any description, is asserted or prosecuted. The party is not to be restored to the possession of any thing. Essentially, it is an appeal on a single point; and the defendant who appeals from a judgment rendered against him, is never said to commence or prosecute a suit against the plaintiff who has obtained the judgment. The writ of error is given rather than an appeal, because it is the more usual mode of removing suits at common law, and because, perhaps, it is more technically proper where a single point of law, and not the whole case, is to be re-examined. But an appeal might be given, and might be so regulated as to effect every purpose of a writ of error. The mode of removal is form and not substance. Whether it be by writ of error or appeal, no claim is asserted, no

demand is made by the original defendant; he only asserts the constitutional right to have his defence examined by that tribunal whose province it is to construe the Constitution and laws of the Union."

"The only part of the proceeding which is in any manner personal, is the citation. And what is the citation? It is simply notice to the opposite party that the record is transferred into another court, where he may appear, or decline to appear, as his judgment or inclination may determine. As the party who has obtained a judgment is out of court, and may, therefore, not know that his cause is removed, common justice requires that notice of the fact should be given him; but this notice is not a suit, nor has it the effect of process. If the party does not choose to appear, he cannot be brought into court, nor is his failure to appear considered as a default. Judgment cannot be given against him for his non-appearance; but the judgment is to be re-examined, and reversed or affirmed, in like manner as if the party had appeared and argued his cause."

"The point of view in which this writ of error, with its citation, has been considered uniformly in the courts of the Union, has been well illustrated by a reference to the course of this court in suits instituted by the United States. The universally received opinion is, that no suit can be commenced or prosecuted against the United States; that the judiciary act does not authorize such suits; yet writs of error, accompanied with citations, have uniformly issued for the removal of judgments in favor of the United States into a superior court, where they have, like those in favor of an individual, been re-examined, and affirmed or reversed. It has never been suggested that such writ of error was a suit against the United States, and therefore not within the jurisdiction of the appellate court."

"It is, then, the opinion of the court, that the defendant who removes a judgment rendered against him by a State court into this court, for the purpose of re-examining the question whether that judgment be in violation of the Constitution or laws of the United States, does not commence or prosecute a suit against the State, whatever may be its opinion, where the effect of the writ may be to restore the party to the possession of a thing which he demands."

All which is respectfully submitted.

James Buchanan,
William W. Ellsworth,
E. D. White.

ARGUMENT, JANUARY 28–29, 1831,

IN THE SENATE, FOR THE CONVICTION OF JUDGE PECK.[1]

HIGH COURT OF IMPEACHMENT.

The United States *vs.* James H. Peck.

Friday, January 28, 1831.

The Managers, accompanied by the House of Representatives, attended.

The Respondent's Counsel also attended.

The Hon. James Buchanan, one of the Managers, addressed the Court on behalf of the United States, as follows:

Mr. President,—I concur with the gentleman who last addressed you in behalf of the respondent, that the fate of the judiciary of the United States may, to a considerable extent, depend upon the event of this impeachment. I believe his position to be true; and it is that characteristic of this proceeding, which has impressed me with the deep sense I feel of its great importance. If this High Court of Impeachment shall establish the claim which has been asserted by the respondent, in behalf of himself and all other judges, that they possess the power to proceed in a summary manner against the authors of all publications, which they may fancy or may believe to be derogatory to their judicial dignity; if they may deprive such authors of their constitutional right to a trial by jury, and fine and imprison them at discretion, then indeed the judiciary will be in danger. The people of this country love their judiciary well, but they love the freedom of their press still better; and if these two great branches of our civil policy shall be placed in hostile array against each other by the decision of this Senate, God only knows what may be the consequences. It is this consideration which has given such solemn importance to the trial in which we are engaged.

In the letter, which Judge Peck addressed to the House of Representatives, in explanation of the charges, which had been preferred against him by Mr. Lawless, he used this strong language. "The liberty of the press has always been the favorite

[1] Stansbury's Report of the Trial of James H. Peck, 425–473. Curtis, in his Life of Buchanan, I. 108, says: "Of Mr. Buchanan's speech, I have found no adequate report." The speech is printed in full, as here given, in the report of the trial by Arthur J. Stansbury, published by Hilliard, Gray & Co., in Boston, in 1833. Judge Peck was defended by William Wirt and Jonathan Meredith. Buchanan's speech was the closing argument.

watch-word of those who live by its *licentiousness*. It has been, from time immemorial, is still, and ever will be, the perpetual *decantatum* on the lips of all libellers." My colleague thought that this remark was a sneer at the liberty of the press, and for expressing that conviction he has been severely reproved by the respondent's counsel. I leave the Senate to judge whether my colleague was not correct in his conclusion, especially considering the time and manner in which the remark was made, and the body to whom it was addressed. Be that as it may, I might here observe, that, if "the liberty of the press has always been the favorite watch-word of those who live by its licentiousness," the licentiousness of the press has always been the favorite watch-word of those who are afraid of its liberty. It has been the pretext used in every age since the art of printing was known, by every tyrant who sought to demolish its freedom; and even Charles the Tenth himself, when he passed those edicts against the press, whose effect upon the people hurled him from his throne, attempted to justify his atrocious conduct by abusing its licentiousness. The counsel, who last addressed you in behalf of the respondent, has presented to us several figures of speech for the purpose of illustrating the necessity of restraining this great instrument of our freedom. However happy, and however eloquent these illustrations may have been, they might with equal truth and propriety have been applied (though that gentleman would be the last to apply them) to the edict of Charles X. Figures of speech prove only the ingenuity or the eloquence of the orator who uses them. They are always dangerous in a grave discussion, where the guilt or innocence of an accused person is to be established. It would be easy for me, in answering the gentleman, to turn his figures against himself and say, Better that the noble vine should shoot into rank luxuriance, than plant a canker in its root which would destroy the tree;—or even commit it to the care of such a vine-dresser as the respondent, to lop away all its fruitful branches, and leave it a naked trunk.

The constitution and laws of the several States have conferred upon juries, under the advice of the court, the trial of the crime of libel. A jury is the only tribunal to which the liberty of the press can be safely entrusted. To allow the judiciary to dispense with this tribunal, whenever any publication has been made affecting the dignity or the official conduct of a judge, is to create a privileged order of men in the State whose will is law, and who are not only judges in their own cause of the guilt of

the accused, but also of the extent of his punishment. Such a power, so far as it goes, partakes of the very essence and rankness of despotism.

Again, the gentleman (Mr. Wirt) in his introductory remarks observed, that he apprehended the existence of some strange and unaccountable prejudice in the minds of the managers, which had influenced and inflamed the spirit of this prosecution. Indeed the gentlemen seem to believe, that we saw what was not to be seen, and were constantly imagining what had no existence, save in our own disordered fancy. Now I would ask of this Court, what possible ground of prejudice the managers could have had against this respondent? He was a judge unknown to fame; "a stranger from the Western wilds." All the managers, from their professional habits, and most of them too from their political feelings, are firmly convinced that the judiciary ought to be independent. I speak no more than the truth when I declare, that in the beginning every bias of my heart was against this impeachment, and that at last I was impelled to undertake it only by an irresistible sense of public duty.

In reply to this suggestion of the respondent's counsel, I must say there appears to exist a stronger prejudice in the gentlemen themselves, than they have even attributed to the managers. I do not blame them for it. I would not employ an advocate who did not enter deeply into the feelings and interests of his clients; and it is with pleasure I find that the respondent's counsel excel in this attribute of a good advocate, as they do in all others. But it does appear to me to be somewhat extraordinary, that such a sudden and extravagant friendship for the respondent should have taken possession of the breast of the gentleman, who last addressed you in his behalf. I am sorry, very sorry, that we cannot reach the accused, without striking through the heart of his advocate. If this be indeed the fact, it constitutes in itself the best reason I have yet heard for the acquittal of the respondent.

There was one circumstance remarked upon by the gentleman, (Mr. Wirt,) as evidence of the existence of prejudice against the accused on our part, to which, in justice to my friend Judge Spencer, I must be permitted to reply. The judge, in his introductory remarks, after expressing the regret which he felt at being obliged to stand before you in the character of a public prosecutor, said that it was a cheering reflection, and one which went greatly to allay his regret, that the House of Representatives, after a mature and laborious deliberation, uninfluenced by

any party feeling, had by a large majority agreed in the necessity of this impeachment. What evidence of prejudice could the gentleman justly extract from this harmless and very proper remark? Did he really believe that a man who has so long occupied a distinguished judicial station in his own State, and whose fame as a jurist has long been known to the people of this country, intended to come before the highest tribunal in the nation, and insist that any proceedings which had taken place in the House of Representatives could furnish the least evidence of the guilt of the accused before the Senate? He never intended to express, nor did he express, any such sentiment; and yet so prejudiced was the learned gentleman himself, that he thought it necessary to take up the time of the court in proving, that as the indictment found by a grand jury is no evidence of guilt before a petit jury, so, neither ought the article of impeachment, voted by the House of Representatives, to be evidence against the party impeached on his trial before the Senate. We freely admit that what was done in the other branch of the legislature cannot and ought not to produce the slightest effect against the accused upon this trial. His guilt must be established, if at all, by the law and the evidence. To these and to these alone the managers appeal for his conviction.

But as the subject has been introduced, I shall take this occasion to remark, that in my opinion the voting of an impeachment in the House of Representatives should never be a mere ex parte proceeding *there*, though it ought always to be so considered *here*. The power of impeachment is too important; the expense to the nation, both in time and in money, is too great to justify the House in proceeding upon the mere ex parte testimony, presented by a private accuser. Neither the investigating committee nor the House should rest satisfied with such evidence alone. They ought to go beyond this rule, and examine so much testimony as to create a rational belief that the accused is guilty. But whatever the House of Representatives may owe to itself in conducting its own proceedings, I concur with the gentleman in the opinion, that the voting of articles of impeachment by that House is entirely out of the question, as furnishing the least evidence of the guilt of the accused before this tribunal.

I now come to the substance of this cause, and I shall endeavor, (though I fear the contrast will be striking) to follow the last counsel, who addressed the court in behalf of the respondent, through his argument, except so far as that argument has

been already answered by my colleague who concluded his remarks yesterday.

What is an impeachable offence? This is a preliminary question, which demands attention. It must be decided, before the Court can rightly understand what it is they have to try. The constitution of the United States declares the tenure of the judicial office to be "during good behaviour." Official misbehaviour, therefore, in a judge is a forfeiture of his office. But when we say this, we have advanced only a small distance. Another question meets us. What is misbehaviour in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the constitution, or some known law of the land. This I think was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offence impeachable, it must be indictable. But this violation of law may consist in the abuse, as well as in the usurpation of authority. The abuse of a power which has been given may be as criminal, as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars, and commits him to prison for one year. Now, although the judge may possess the power to fine and imprison for this offence, at his discretion, would not this punishment be such an abuse of judicial discretion, and afford such evidence of the tyrannical and arbitrary exercise of power, as would justify the House of Representatives in voting an impeachment? But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the Judge,— a libel, however, perfectly decorous in its terms, and imputing no criminal intention, and so difficult of construction, that though the counsel of the respondent have laboured for hours to prove it to be a libel, still that question remains doubtful. If, in this case, the Judge has degraded the author by imprisonment, and deprived him of the means of earning bread for himself and his family, by suspending him from the practice of his profession for eigh-

teen months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the Judge?

A gross abuse of granted power, and an usurpation of power not granted, are offences equally worthy of and liable to impeachment. If therefore the gentleman could establish, on the firmest foundation, that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far towards the acquittal of his client.

I make these remarks, not because I entertain the smallest doubt of being able to establish, that the respondent has been guilty of a total usurpation of power in open defiance of the constitution and laws of the land; but merely to express what I believe to be the true law of impeachment.

It has been contended, that even supposing the judge to have transcended his power, and violated the law, yet he cannot be convicted, unless the Senate should believe he did the act with a criminal intention. It has been said that crime consists in two things, a fact and an intention; and in support of this proposition, the legal maxim has been quoted that "actus non fit reum, nisi mens rea." This may be true as a general proposition, and yet it may have but a slight bearing upon the present case. Did the gentlemen mean to contend, that before the Judge could be convicted, we must prove by positive testimony malice in his breast, a lurking enmity against Mr. Lawless, and the purpose of gratifying a base revenge? I should suppose that to have been the reason for which they asked so many questions to show, that the Judge and Mr. Lawless had previously been upon good terms. This argument may be answered with great force in the strong language of the respondent himself, in his answer to the article of impeachment. "Both in law and in morals, (says the Judge) every man is presumed to intend the natural consequences of his own actions." This was the rule by which he tried Mr. Lawless. He took up the article signed "A Citizen," and from that article alone he inferred the intention of its author. In doing this, he acted correctly; but his jaundiced mind and wounded vanity had so diseased his perceptions, that he saw burning letters upon the scroll, although in themselves they were perfectly innocent and harmless.

"Out of the abundance of the heart the mouth speaketh," and "the tree is known by the fruit," are axioms which we have derived from the fountain of all truth. Actions speak louder

than words, and it is from the criminal action that judges must infer the criminal intention. If a judge has cruelly and illegally imprisoned and punished an American citizen, the court before whom he is impeached will never set out to hunt after a good motive for this bad action.

I admit that if the charge against a judge be merely an illegal decision on a question of property, in a civil cause, his error ought to be gross and palpable indeed, to justify the inference of a criminal intention, and to convict him upon an impeachment. And yet one case of this character has occurred in our history. Judge Pickering was tried and condemned upon all the four articles exhibited against him, although the three first contained no other charge than that of making decisions contrary to law in a case involving a mere question of property; and then refusing to grant the party injured an appeal from his decision, to which he was entitled.

And yet am I to be told, that if a judge shall do an act which is in itself criminal; if he shall, in an arbitrary and oppressive manner, and without the authority of law, imprison a citizen of this country, and thus consign him to infamy, you are not to infer his intention from the act? Is not the act itself the best source from which to draw the inference? Must we, without any evidence, in the spirit of false charity and mercy, ramble out of the record to imagine a good motive for this bad conduct?

Such a rule of decision would defeat the execution of all human laws. No man can doubt but that many a traitor, during the American Revolution, believed in his conscience that he owed allegiance to the king of Great Britain, and would violate his duty to his God, if he should lend the least aid to the cause of freedom. But if such a man had committed treasonable acts, will any person say he was not guilty of treason, because in his secret heart he might have had a good intention? Does a poor naked hungry wretch, in the midst of this inclement season, filch from my pocket a single dollar, to satisfy the cravings of appetite; the law infers a felonious intent, and he must be convicted and punished as a thief, though he may have had no other purpose but that of saving himself and his children from starvation. And shall a man, who has been selected to fill a high judicial office on account of his knowledge of the laws of the land, be permitted to come before the Senate, and say, It is very true that I did, against law, imprison an American citizen, and deprive him for eighteen months of the power of practising that profession by

which he lived; it is true that I violated the Constitution of the United States by inflicting on him "a cruel and unusual punishment;" but I did not know any better. I had a good intention. I did the act to subserve the purposes of justice, and to prevent my own official dignity from falling into contempt before the citizens of Missouri. Of all men living, a judge "ought to be presumed to intend the natural consequences of his own actions." Out of his own lips let the respondent be judged.

The fourth article of impeachment exhibited against Judge Pickering charged him with having appeared upon the bench in a state of total intoxication. This was gross official misbehaviour. Would the Senate in that case have gravely listened to an argument to prove, that the judge might have got drunk without any evil intention? Certainly not. The act was done. The tribunal had been disgraced; and the Senate inferred his intention from his conduct, and turned him out of office.

I have made these remarks in reply to the argument of the gentleman, and not because they have any material bearing on the case now before the Court. When I come to sum up the testimony (which has hitherto I think been too slightly examined,) I trust I shall be able to make it as clear as the light, that the Judge acted under the influence of his evil passions and the stings of mortified vanity, and not with that coolness, caution and dignity, which ought ever to be found upon the bench, and which will ever be respected there. Nor should I consider his conduct the less reprehensible, had he been able to command his temper, and do an act of cruelty with calm and deliberate malice.

I have now arrived at the great points of the cause. And I shall in the first place proceed to show, that the conduct of Judge Peck was in express violation of the constitution and laws of the country; and in the second, that from the circumstances attending the case, the Court ought to infer a criminal intention. The first will be a question of law, the second of fact. If I should succeed in establishing these two propositions, then I shall demand the judgment of this Court against the respondent. I well know that the feelings of mercy are far more congenial to the breast of every member of this Court, than the dictates of stern and inflexible justice; but yet I trust they will remember that in pardoning this Judge, if he be guilty, they may attack the first principles of civil liberty, and destroy one of its firmest foundations.

In discussing the first proposition, it is not my intention to occupy any of the ground so ably gone over by my colleague, (Mr.

Storrs.) I shall neither mar the beauty nor the force of his argument by any observations of my own. He has conclusively established, that the power to punish the offence of scandalizing a court was a Star Chamber power; and although it was there exercised in a summary manner by attachment, fine and imprisonment,—yet that after it came into the court of King's Bench, upon the dissolution of that odious tribunal, this offence has always been tried, like other criminal charges, by a jury of the country.

Neither shall I discuss the question to what extent courts of justice in England possess the power of punishing libels against the judges, the parties, or the witnesses in causes depending. I will say, however, it is an astonishing fact, that in that country, the industry of the gentlemen has furnished us but four cases in which an attempt has been made to punish in a summary manner the author of a libel even in causes depending; and three of them occurred in the court of chancery. We are warranted in believing that none others exist. In one of the cases of impeachment, which has been cited by the counsel of the respondent, (that of Passmore) the Judges of the Supreme Court of Pennsylvania were defended before the Senate of that State by Messrs. Dallas and Ingersoll. The great learning and high professional character of these gentlemen are well known. They were defending judges of as pure a character as ever adorned any bench in this or any other country, and they were instigated to exertion by warm personal friendship and personal feeling; and yet they were able to produce but the four cases which have been cited by the counsel upon the present occasion. These are Roach *vs.* Roach's executors, 2 Atkyns 469; Pool *vs.* Sacheverel, 1 P. Williams 675; the case of Mrs. Farley, 2 Vesey 250, and that of the King *vs.* Wyatt, 8 Modern 123. The case ex parte Jones, cited from 13 Vesey 237, was not merely a case of libel, but it was a direct attempt to influence Lord Erskine in a cause then depending.

We have heard much of the necessity that a court should sustain its own dignity, without which, we are told, courts could not exist; and yet it does not appear that this power has been exercised by any court of law in England for more than a century, and then it was employed in vindicating the character of a Doctor of Divinity at Oxford. The case of the King *vs.* Almon, of which we have heard much, turns out to be no case at all. The opinion of Chief Justice Wilmot, which has been so greatly relied upon by the respondent, was never delivered in court, but was found

after his decease, among the rubbish of his office, and was published to the world to help to make a book. The prosecution against Almon was abandoned by the highest tory administration which has existed in England since the revolution of 1688, because they did not dare to press it any further.

I should not have touched this part of the case, had it not been assigned to me as a duty by my colleagues, to answer the argument founded on the two cases from Pennsylvania. I shall perform this duty with the more pleasure, as it will be a fit and appropriate introduction to the argument, which I intend to advance on another branch of the subject.

In Pennsylvania, at an early day, the same struggle took place between judicial prerogative and the rights of the people, which has brought the present impeachment before the court, and there the rights of the people have been triumphantly vindicated. This must ever be the issue of such a struggle under a government like ours; and I will venture to predict, that whatever may be the decision of the Senate upon this impeachment, Judge Peck has been the last man in the United States to exercise this power, and Mr. Lawless has been its last victim.

In the case of Eleazer Oswald, (cited from 1 Dallas 319,) an action for libel had been brought against him in the Supreme Court of Pennsylvania, in the year 1788, by Andrew Browne, who demanded special bail in £1000. Previous to the return day of the writ, the question of bail was heard before one of the judges, at his chambers, and Oswald was discharged on common bail. From this order of the Judge, Browne appealed to the court.

This Court will observe that all had been done by the judge, which Oswald could have desired; and yet on the very day before the return of the writ, there appeared in "the Independent Gazetteer," his own newspaper, above his own signature, a scandalous and outrageous libel, both against Browne and the court, evidently intended to influence the future decision of the cause. It was a publication of such a character, that all persons, at the first blush, would pronounce it to be a gross libel in relation to the cause then pending.

After the return of the writ, Mr. Lewis moved the court for a rule to show cause why an attachment should not issue against Oswald, for this alleged contempt of court. And what was the first thing he did to sustain his motion? It was to give a transcript of the record in evidence "*to show that the action between Browne and Oswald was depending in the court.*" Chief Justice

M'Kean, and the two other judges on the Bench at the time, granted the rule and ordered Oswald to be brought before them. I shall certainly never utter a sentiment which might tend to impair the fair fame of that very distinguished and illustrious judge. He was well known, however, to hold high notions of his own judicial prerogatives, and to be a severe disciplinarian in court.

The Supreme Court of Pennsylvania assumed jurisdiction of this case as a contempt, and Oswald was fined and imprisoned expressly upon the ground, that the tendency of the libel was to prejudice the public, with respect to the merit of a cause then depending and afterwards to be tried by a jury. They do not appear to have entertained the most distant idea, that their power extended to the infliction of punishment, in a summary manner, against all persons who should venture to criticize the merits of an opinion, published by the court to the world after the cause had been finally decided. The exercise of such a power was reserved for Judge Peck.

Oswald afterwards complained to the General Assembly of the State against C. J. M'Kean and the two other judges, who had concurred in the sentence against him. When his complaint came to be heard before the Assembly, Mr. Lewis defended the decision of the court, upon the ground that the Bill of Rights in our state constitution of 1776 did not simply declare, that no man should be deprived of his liberty except "by the judgment of his peers;" but that "the laws of the land" were also embraced in this exception. The language used is, "nor can any man be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers." It was contended that a distinction existed between "the judgment of a man's peers" and "the laws of the land," and that as the summary power of punishing by attachment had been actually exercised before the Revolution by Chief Justice Kinsey, it was preserved and sanctioned by the constitution, as being a part of "the laws of the land." In support of this principle it was said that Magna Charta contained the same expressions; and yet the English judges, after its passage, had always exercised the power of punishing contempts of court by attachment.

I shall not at present stop to show the entire futility of this reasoning, as it applies to the case of libel. Even if it were true to its utmost extent, it could have no bearing on the cause now before this court. We are not now before a State Senate, trying

a State Judge. Under the constitution of the United States, no pre-existing law of the land was recognized. There never had been such a law. The people of the United States established a new federal government, and conferred upon it certain enumerated powers. Upon the federal constitution alone, and the laws enacted in pursuance of its provisions, they have rested their rights and their liberties, so far as this government is concerned.

As no member of the Assembly entertained a doubt of the upright intention of the judges, none was in favor of impeaching them. But Mr. Findlay offered a substitute for the unqualified resolution in favor of the judges which had been proposed. This substitute was in the following language:—"Resolved, that the proceeding of the Supreme Court against Mr. Eleazer Oswald, in punishing him by fine and imprisonment, at their discretion, for a constructive or implied contempt, not committed in the presence of the court, nor against any officer or order thereof, but for writing and publishing improperly, or indecently, respecting a cause depending before the Supreme Court, and respecting some of the judges of said court, was an unconstitutional exercise of judicial power, and sets an alarming precedent, of the most dangerous consequence, to the citizens of this commonwealth."

Mr. Findlay sustained this resolution with all the practical good sense and correct knowledge of constitutional liberty for which he was remarkable. "He acknowledged that he had received great information and pleasure, from the learned and eloquent speech of the member who preceded him; (Mr. Lewis) but he thought it was unnecessary, upon the present occasion, to explore the dark and distant periods of juridical history. The rights and immunities, which formed the great object of the Revolution, he contended, were capable of an easy and unequivocal definition; they were not of such remote antiquity as to be lost even to the feelings of the people; and the constitution of the state was the only proper criterion, by which they could be judged and ascertained. He did not, therefore, intend to pursue Mr. Lewis, in the track of legal disquisition; but appealing confidently to the instrument itself, he deemed it to be his duty to pronounce, that the decision of the Supreme Court was a deviation from the spirit and the letter of the frame of government."

Mr. Findlay's substitute was, notwithstanding, negatived; and the original resolution adopted by a vote of 34 to 23.

In 1802, the Supreme Court of Pennsylvania again exercised the power in question *in a case depending before them*. They did

so, because it had been sanctioned as they believed by the new constitution of 1790, which, like the old one, contained a provision declaring that the accused "cannot be deprived of his life, liberty or property, unless by the judgment of his peers, *or the law of the land;*" and because they had a precedent before them in the case of Oswald, which had been sanctioned by the General Assembly of Pennsylvania, so far as the vote of a legislative body could sanction the unconstitutional violation of personal liberty. But in 1802, the principles of our government were better understood. We were then getting clear of the prejudices, which had so long bound us to the British government, and led us, on this side of the Atlantic, to make the judgments of their courts the standard of our decisions even on questions affecting our personal rights. The Judges of the Supreme Court had not kept up with the spirit of the times; and in a summary manner they fined and imprisoned Thomas Passmore, the defendant in a cause then pending before them, for the publication of a libel against the plaintiffs, in relation to that cause. For this act they were impeached by the House of Representatives by a vote of 65 to 16. Of the then Chief Justice Shippen it may be said, he was distinguished as much for his amenity of temper as for his extensive legal acquirements. He was what the counsel in this cause has painted his client to be—a man so kind and guileless that he would injure no one—he had not the heart voluntarily to inflict pain upon a fellow creature. And yet, though his character was perfectly known to every member of the House of Representatives, that body thought, if he had inflicted fine and imprisonment in a summary manner upon a citizen for the publication of a libel and had deprived him of a trial by "his peers," it was a dangerous usurpation of authority, and they must infer the intention from the act. They proceeded upon principle, and could not have felt any enmity against the chief justice or the two other distinguished judges whom they impeached.

These judges were tried and were acquitted; but that the Court may know how narrowly they escaped, I will state that 13 members of the senate voted for their acquittal, whilst 11 voted for their conviction. A change of but three votes would have produced the constitutional majority against them. By this vote the exercise of such a power was forever put down in Pennsylvania. No judge has since that day attempted to exercise it. But to make assurance doubly sure, the legislature, in 1809, passed a declaratory act upon the subject, to one section of which

I beg leave to refer the court. It declares, "that from and after the passing of this Act, all publications out of court respecting the conduct of the judges, officers of the court, jurors, witnesses, parties or any of them, of, in, and concerning *any cause pending* before any court of this commonwealth, shall not be construed into a contempt of the said court, so as to render the author, printer, publisher, or either of them, liable to attachment and summary punishment for the same; but if such publication shall improperly tend to bias the minds of the public, the court, the officers, jurors, witnesses, or any of them, or a question pending before the court, any person feeling himself aggrieved by such publication shall be at liberty either to proceed by indictment, or to bring an action at law against the author, printer, publisher, or either of them, and recover thereupon such damages as a jury may think fit to award."

The court will observe the remarkable phraseology here employed. The legislature of Pennsylvania never dreamt that any judge would attempt to exercise this power in a cause not depending in judgment. The Act is expressly confined to "causes pending." If the power of the courts previously to the passage of this Act extended also to causes decided, as the gentlemen have been compelled to contend on the present occasion, then the legislature have been guilty of the gross absurdity of expressly forbidding this arbitrary proceeding *in causes pending*, where there might be some pretext for its exercise, whilst they have remained entirely silent, in relation *to causes decided*, where the only plausible reason which can be given for the existence of such a power entirely fails.

It was urged against the judges of the Supreme Court of Pennsylvania, upon their trial, that the cause in relation to which they fined and imprisoned Passmore had been finally ended, and therefore that their conduct was clearly illegal. Whether from the face of the record, that cause was pending or not, was made a serious question. I have looked over the arguments of Mr. Dallas and Mr. Ingersoll, although I have not read every page of them, and I cannot discover that they attempted to sustain the proposition, that the court possessed the same power, after a cause had been decided, that they did whilst it was still pending. If these gentlemen had supposed they could have maintained this position, the circumstances of the case called loudly upon them to make it a prominent point of their argument. If any such point was made, it has escaped my observation. At all

events, the legislators of Pennsylvania, in their declaratory Act which grew out of this trial, did not deem it necessary even to mention the case of the publication of any article, referring to causes which had passed into final judgment. But it has been contended, that although the case of Soulard had been decided, yet the publications of Mr. Lawless ought to be considered a contempt, because other causes were then still depending before Judge Peck on the same principles.

This is a novel doctrine, and has not been sustained by a single authority. Who ever heard before, that after the final decision of a cause in one court, and during its pendency before another, the very same publication could be a contempt against both courts? This would be giving the contempt a double aspect; and a man might be punished by both courts—and afterwards indicted for the very same offence. It would be a strange principle indeed to establish, that no man should be permitted to review the reasons delivered by the court when they rendered a final judgment in one cause, lest peradventure there might be other causes of a similar nature still depending.

The Opinion of Judge Peck in Soulard's case was a virtual rejection of all the Spanish claims before his court. Nothing afterwards remained to be done but to strike them from the list. They all fell under this single blow. They were all decided in this one cause, and were afterwards withdrawn by the parties. Can it be possible that the publication of Mr. Lawless, although it could have been no contempt, had all the claims been withdrawn when it was made—yet that if one lingering claim had still remained upon the docket, this would have changed its nature and converted it into a contempt? It cannot be.

In courts of extensive business, the decision of one case will in almost every instance have a direct bearing on some other. If no man can dare to publish a criticism on such a decision, unless under the penalty of being guilty of a contempt of court in case another cause of a similar nature should be found upon the docket, then all distinctions between causes depending and decided are in effect abolished.

I have thought it proper to make these remarks in reply to this argument of the gentleman, although in the view which I shall take of the present impeachment, it would be a matter of no importance, even if they could establish their position.

In the progress of this trial, we have made a long excursion to England. We have had the principles of the English govern-

ment extensively discussed, and the court has been entertained with a minute account of the judicial history of that country, and what does it all prove towards the elucidation of this cause? I should not have cared if the gentlemen had succeeded in establishing, that the offence of scandalizing a court, whether a cause was pending or not, is punishable in a summary manner in England. If it were so, what then? Are we to look to the laws of England, or to the Constitution and laws of the United States, for the powers of our judges? At the revolution we separated ourselves from the mother country, and we have established a republican form of government, securing to the citizens of this country other and greater personal rights, than those enjoyed under the British monarchy. The gentlemen have been discussing the extent of personal rights in England; but that is not the standard of the rights of the people of this country. When we arrive at the proper stage of the cause, I think I shall then show that the language of the Constitution of the United States upon this subject is so plain, that he who runs may read. Judge Peck had no occasion to go to England and consult the common law to discover prerogatives for the courts of this country; all he had to do, to ascertain the limits of their legitimate power over contempts, was to read the seventh section of the Judiciary Act of 1789, and the Constitution of the United States.

In the further prosecution of this subject, I shall contend that under the Constitution and laws of the United States, the federal courts possess no power to punish in a summary manner, as contempts, publications reflecting on the court, whether in relation to a cause pending or one finally decided, and that in either case, such a power is equally at war both with the spirit and the letter of the Constitution.

And here I will take leave to observe, that any one who has attended to the course of this trial, might alone imagine it was the impeachment of an English judge before the House of Lords, and not that of an American judge before the Senate of the United States. We have scarcely heard of our own Constitution or our own laws. This may have been accident, or it may have been design. If it has been by design, it shall not succeed. The gentleman shall not keep us pursuing the judicial history of England for the last five hundred years, and thus place out of view our own constitutional guarantees for the personal rights and personal liberty of our own citizens.

If the courts of the United States do possess this power, it

must be derived either from the common law or from the inherent powers which necessarily belong to all courts of justice, or from the Judiciary Act of 1789. If the power exists at all, it must come from one of these three sources.

As it regards the common law, I think it is now conclusively settled by the adjudged cases, that the courts of the United States possess no criminal common law jurisdiction. If any question can be considered at rest, it is this. It is utterly astonishing to me, that such a claim of jurisdiction should ever have been asserted for the judiciary. The Constitution of the United States called into existence a new government. Under its provisions Congress established new courts of justice. To the legislature it belonged to declare what ought or ought not to be the law by which these courts should be governed. The attempt to transfer from England to the United States the whole criminal code of the common law, without the sanction of Congress, was the most extraordinary that can well be conceived. I have ever been a friend to courts, and in an especial manner a friend to the Supreme Court of the United States, and I trust I have shown it by my public conduct; but if even *they* should attempt to usurp the legislative power of declaring any act to be a crime in this country, merely because it is a crime by the common law of England, I do not know but I should be willing to bring the judges of that court themselves before this tribunal. The Congress of the United States have ever legislated upon the principles, that an act must be declared a crime by law before the courts can notice it as such. In 1825, the chairman of the Committee on the Judiciary in the House of Representatives, who is now a distinguished member of this court, (Mr. Webster) reported a bill on the avowed principle that many actions manifestly of a criminal character had not been declared crimes by act of Congress, and it was necessary that this omission should be supplied, in order to give the courts of the United States the power of trying and punishing them. The bill thus reported was enacted into a law. This doctrine, which is clearly correct in reason and in principle, has been settled by the two adjudged cases, which have already been cited. Indeed so firmly is it established, that the late Mr. Justice Washington, in delivering a charge to the grand jury at Philadelphia, in 1822, laid it down as settled, that the courts of the United States have not cognizance of offences at common law, unless it be conferred on them by the laws of the United States.

I shall therefore take it for granted, as an axiom, that no common-law criminal jurisdiction exists in the courts of the United States. I now ask, is the power of punishing a libel, in a summary manner as a contempt of court, a criminal common-law power, or is it not? It is true, as has been said, that the power to punish for contempts is exerted by courts of civil jurisdiction; but that does not make the power either civil or criminal in its character. It is the nature of the power, after which we are inquiring, not the character of the courts by whom it is exercised. Is not a man accused, tried, found guilty and punished for a contempt of court? Is not his conduct treated as a criminal offence throughout? I need not surely argue this point. It has been settled by the authorities cited on the other side. I will merely read a short passage on the subject from Sergeant's Constitutional Law, 66 and 67.

"But the Supreme Court will not grant a *habeas corpus* to bring up a person, who is in the custody of the Marshal, under a commitment of a Circuit Court of the United States for a contempt; nor, if granted, will it inquire whether the court erred in its judgment of the law applicable to the case, if there be no question but that such commitment was made by a court of competent jurisdiction, and in the exercise of an unquestionable authority. *The adjudication of the court below is a conviction, and the commitment in consequence is an execution; and the exercise of the power of revising the case on a habeas corpus would be the exercise of an appellate jurisdiction in criminal cases, which is an authority not granted by the laws of the United States*, except by a certificate that the opinions of the judges are opposed; and the court will not do indirectly, what they cannot do directly. Where, therefore, the party was in gaol, in custody of the Marshal, under a commitment of the Circuit Court for the District of Columbia, for an alleged contempt in refusing to answer a question put to him as a witness, on the trial of an indictment, the Supreme Court refused to grant a *habeas corpus* to bring up his body." Ex parte Kearney, 7 Wheat. 38. See also Anderson, *vs.* Dunn, 6 Wheat. 204.

I think then I have fully maintained the position, that this power cannot be derived from the common law. That libelling a court is a criminal offence at the common law cannot be doubted. It is equally clear that the courts of the United States possess no criminal common-law jurisdiction. The common law, therefore,

as the source of such a power as was exercised by the respondent, must be abandoned.

Let me now advance one step further and consider, whether the respondent's counsel can derive this authority from the inherent and necessary powers vested in all courts. Upon this point, we shall not differ very widely, in the abstract. I admit that by its very organization, every court of justice is clothed with the power of imposing silence, respect and decorum in its presence, and enforcing obedience to all its lawful commands. 6 Wheaton *227*. Anderson *vs.* Dunn. I heartily concur with the positions taken and ably sustained by Mr. Wirt, and Mr. Jones, in their argument in that case, and hold the general principle of the law to be what they have stated, "that the power of punishing contempts is incidental to all courts of justice, and even to the most inferior magistrates, *when in the exercise of their public functions,* and arises out of the absolute necessity of the case, which renders it indispensable that they should have such a power," page 219. Neither do I say that the Supreme Court, in deciding this cause, intended to enumerate all the cases in which courts have the power of punishing for contempts; but from their general reasoning it is manifest they could not have thought for one moment of extending it to the punishment of libels. They claim the power as inherent, from necessity and necessity alone; but necessity is the tyrant's plea, and beyond its limits the power cannot exist.

I shall first show that the power exercised by the respondent is not necessary, and then that it is in express violation of the constitution.

First, then, as to the necessity for its existence. The power of punishing for contempts is greatly misunderstood, perhaps even by the distinguished gentlemen who act as counsel for the respondent. This power, when confined to its own proper limits, is not only harmless, but so necessary that without it no cause could be brought to a conclusion. It is only when courts attempt to extend it to cases which it was never intended to embrace, that it becomes dangerous to liberty. What is it? A juryman is summoned to attend court; he disobeys the writ, and this is a contempt. An attachment issues to bring him in, and on its return he is asked, "Why did you not attend?" He gives his reason under oath, and if it be a good one, there is an end of the matter. This is the origin of the purgation by interrogatories, of which we have heard so much on this trial. So a witness is

subpœnaed. He does not appear. He is brought in on an attachment. He is sworn, and tells the court he was prevented from attending by sickness, and is then discharged. In like manner, when the court make an order upon the sheriff to pay money over, if he disobeys, he is attached. When he comes into court upon the attachment, he may be sworn, and may excuse himself by rendering a good reason for his disobedience. In all these and other similar cases, it is the privilege of the party to have interrogatories propounded to him. If he chooses to let the matter stand upon the evidence on which the court proceeded against him in the first instance, it is well, and the court then punishes him; but if he asks leave to excuse his disobedience, he is then sworn and answers. This purgation, whilst confined to the cases for which it was originally provided, is innocent and highly advantageous to the party. But when courts, using the power to punish for contempts, as a pretext to enlarge their jurisdiction, extended it to the case of libels, then this power, so simple and salutary in itself, became odious, arbitrary and tyrannical. Then the power of purgation, which was intended solely for the benefit of the accused, becomes an engine for his conviction. If he answers and confesses his guilt, he is liable to punishment; if he refuses to answer, he is then, for such refusal, pronounced guilty of a high and aggravated contempt sufficient in itself to justify the whole proceeding. It is, to use the language of the Respondent, "a new and substantive contempt, which would, of itself, have justified the sentence that was passed." If he clears himself upon oath, he is discharged; but in that case, if he has sworn falsely, he may be prosecuted for perjury.

The extension of this power to libels is nothing better than a mere fiction of law. It is absolutely necessary that courts should have the power of compelling the attendance of witnesses and jurors by attachment; otherwise the course of justice would be obstructed. It could not proceed. In analogy to this principle, courts have assumed the position, that the course of public justice would be entirely obstructed, if they should permit any thing disrespectful to themselves to be uttered or published; and they have therefore thought proper to usurp the power of punishing libels against themselves as contempts of court; thus erecting one of the most formidable engines of oppression that was ever set up in a free state.

I shall now attempt to bring the odious features of the power, when applied to libels, into one group before the Senate. If my

sketch should not be accurate in any particular, (though enjoying the advantage of speaking last) I ask to be corrected by the gentlemen.

What is the power of punishing libels as contempts? An individual publishes a criticism to the world upon the opinion of a court in a cause, either still pending or finally decided, which the judge fancies to be an attack either on his dignity or his character. What, on the principles contended for, has he a right to do? He may call the author to answer before him, and, with all his feelings of mortified vanity excited to the highest pitch by this attack in the public papers, he is constituted the sole judge in his own cause. His power to fine and to imprison is unlimited. He knows no rule but his own discretion. His mere will stands for the law of the land, and from his decision there is no appeal. If his victim should unfortunately belong to the profession of the law, then, in addition to fine and imprisonment, he may be deprived of the means of earning bread for himself and his children, by a sentence of expulsion or suspension from the practice of his profession. The punishment is measured by no other standard than the excited feelings of the judge; and in all the wide field of judicial discretion there is no barrier to protect the accused from his fury. When he has decided that the offence is a contempt of court, he calls upon the accused to answer interrogatories. If he answers and confesses, he is punished of course. If he is so degraded as to bow down submissively at the footstool of usurped power, and will swear he had no intention of calling a judge weak or wicked, whom he believed to be so in his heart, he is discharged; but then he is liable to an indictment for perjury. If he stands on the rights and dignity of an American citizen and refuses to answer, (as I feel in my bosom I should have done, had I been Mr. Lawless, at the peril of my life,) this refusal is a high and aggravated contempt. What law is this for these United States? It is against every principle of civil liberty and all notions of human right. The principles and the spirit of the American revolution would have put such doctrines to flight forever, even if we had no written constitution by which they are condemned.

I said that the power of impeachment was a tremendous power. I am happy I used the expression, since it has given birth to one of the most beautiful exordiums I ever had the pleasure of hearing. But this power is as the morning breeze compared with the raving storm, when it is placed by the side of the power to punish libels as contempts, now claimed for the judiciary. The

effect of an impeachment is a mere dismissal from office, and in very aggravated cases a judgment of disqualification might probably be pronounced; but the power now claimed may at once subject any attorney or counsellor in the United States, who may express, in the public papers, an opinion in the least degree derogatory to the capacity or integrity of a judge, not only to fine and imprisonment, but to a deprivation of the profession by which he lives.

And this is the power which the gentleman (Mr. Wirt) would infer by construction, as implied in the mere creation of a court of justice. He says correctly, that the constitution of the United States contains many terms and phrases derived from the common law, and that to the common law we must resort for their meaning. He gives as an example the clause which declares, that "the Senate shall have the sole power to try all impeachments," and asks where are we to look for the meaning of the term impeachment? Must we not go to the common law? Granted. So the constitution provides, that "the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment, for treason, bribery or other high crimes and misdemeanors." Must we not, says the gentleman, refer to the common law for the meaning of "high crimes and misdemeanors?" Who doubts it? On the same principle, if any term of art is used in an instrument of writing, we must refer for its meaning to the best standard publications on the subject of that art. It means no more. The gentleman has woven the web of his argument with great ingenuity. He now advances another step, and tells us that Congress under the constitution have established courts of law and courts of equity, and asks us how we are to ascertain what either mean, without resorting to the common law. So far he is correct. But then, per saltum, by a most astonishing bound, he infers, that the mere establishment of a court, *ex vi termini*, confers upon it all the criminal power of punishing contempts which belongs to the courts of England. This, give me leave to say, is an entire non sequitur. Placed in the form of a syllogism, the argument would stand thus:—The constitution in its grants of power has used common-law terms: the common law must be referred to for the purpose of ascertaining the meaning of these grants of power; therefore, where no such express grant has been made, but merely an authority to establish courts of justice has been given, these courts shall by implication possess the same power of punishing all criminal

common-law offences which the courts of England have enjoyed; and this although neither the constitution nor the laws of the United States have conferred upon them any such power. Had the constitution given to the courts the power of punishing libels as contempts, then the common law might fairly have been invoked for the meaning of these terms; but as it is silent upon the subject, the gentleman's argument has no foundation upon which it can rest.

In this argument the gentleman has carried the doctrine of implied powers further than has ever been contended for heretofore. I am myself friendly to a fair and liberal construction of the constitution; but to decide that because Congress has established a court, that therefore, *ex vi termini*, that court has all the criminal powers exercised by courts of a similar character in England under the common law, is a doctrine to which I shall never assent. I feel satisfied the gentleman himself, upon a re-examination of his own argument, would not wish that any such doctrine should prevail. (I speak this from knowing his habits of thought as a public man, although I do not enjoy the honor of his personal acquaintance. The gentleman is mistaken if he supposes he can be unknown to posterity, or that his character required the explanation he has this day deemed it proper to make to the court.)

I think then it has been proved, that the federal judiciary, which is a mere emanation under the constitution from a Congress possessing only limited and specific powers, was not on its establishment invested by construction with all the power of deciding what were contempts against its own dignity, and all the power of punishing them in a summary manner, which belongs to the courts of a monarchy governed by an omnipotent parliament.

Whatever inherent powers the courts of the United States possess, they must derive from the great law of necessity. Let us then proceed more directly to inquire whether there be the least necessity for the possession of a power by courts of justice to punish libels as contempts.

The constitution of the United States presents the best and the only rule for judging of the extent and the limits of this necessity. It is a grant of enumerated powers. From the very nature of such a grant, Congress is restrained from exercising power on any subject not embraced by the constitution. This would have been the principle of construction, without any constitutional rule upon the subject: because both in reason and

in law a grant of certain enumerated powers necessarily excludes all powers not enumerated. Expressio unius est exclusio alterius. But so jealous were the people of the United States, as to the exercise of power, that the constitution expressly declares that all powers not granted are reserved to the States or to the people. It is true that a few wild enthusiasts have seized upon two or three words in the preamble of that instrument, and have construed them as if the whole constitution were to be superseded by its preamble. These men, because its framers have declared it to be their intention, by its provisions, "to promote the general welfare," would construe this into an express grant of power, which would swallow up all the other powers in the constitution, and leave Congress the uncontrolled arbiter both of the States and of the people. This absurd doctrine has never been the creed of any political party in this country, though it has been held by a few individuals.

The constitution itself, by a necessary analogy, furnishes the true rule for the implied power of the courts. It declares that "Congress shall have power to make all laws, which shall be necessary and proper for carrying into execution" the powers expressly granted. In like manner, the courts of the United States, by the very act of their creation, were invested with such implied powers as were necessary for self-preservation, and for conducting the business with which they were entrusted. The implication of power cannot and ought not to transcend this necessity. When the Congress of 1789 came to legislate upon this subject, they fixed the proper limit in language both accurate and comprehensive. The 17th section of the judiciary Act provides, "that all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law, and shall have power to impose and administer all necessary oaths and affirmations, and to punish, by fine or imprisonment, at the discretion of said courts, *all contempts of authority in any cause or hearing before the same.*" What was the argument of the respondent's counsel on this point? They contended that this section merely affirmed the existence of general powers, which would have existed without it, and was not intended to limit any of the powers which it embraced. This I grant to be correct with respect to the two powers first enumerated. The courts could doubtless have granted new trials and administered oaths, if these powers had

not been given by the act. But what is the language used in relation to contempts? Is it general in its character? Does it authorize the courts to punish all contempts without any limitation? By no means. Their power is confined to the punishment of "*all contempts of authority in any cause or hearing before them.*" The power is given so far as any necessity exists for its exercise; beyond that the grant does not extend. It is evidently confined to what are called direct contempts. There can be no pretext under this language for including those which are merely constructive. It embraces all the powers, which the Supreme Court have declared in the case of Anderson and Dunn they would possess without the provision of written law. No person can contend for a moment, that it authorizes the punishment of libels as contempts of court.

I have been reflecting much upon this subject, and endeavoring to discover whether there was a single power of a proper and necessary character not embraced by the language of this Act, and I cannot fancy one. The counsel who first addressed the court in behalf of the respondent contended, that it would not embrace the case of a juror, who disobeyed the process of the court, because a general venire facias issues, and the jury is not summoned to try any one cause, but all the causes on the list at that particular term. But did not the gentleman perceive, that he was himself furnishing the best answer to his own argument? A juror, in disobeying his summons, would be guilty of a contempt not in one particular cause only, but in any or all the causes pending for trial before the court, and is therefore embraced by the language of the seventeenth section. He also suggested the case of tumultuous noises, not in the presence of the court, but so near to the court-house as to interrupt the progress of business. But would not such a disturbance be a contempt within the language of the Act, in whatever cause or hearing happened then to be before the court?

But for one, I solemnly protest against the mode adopted by the gentlemen of construing statutes of the United States. When the language of a statute, at the same time that it confers a power, limits its exercise by express words, for a court to say, We will not confine ourselves to this limit, but will take the power from the Act as far as it goes, and then seek for the remainder among our inherent powers, is in my opinion to adopt a very bad rule under our constitution and laws. When Congress have spoken not generally but specially on the subject of contempts, it is surely

at war with the spirit of the federal government for the courts to assume other powers than those which have been expressly granted.

But it is of little importance to pursue this branch of the subject further. Whether all possible cases of the proper exercise of this power are or are not embraced by the 17th section of the judiciary act, all agree that the courts, if they pass its limits, are still confined to such inherent powers as are founded on necessity. Is a publication in a newspaper, even in relation to a cause depending, which reflects on the judge, embraced by this plea of necessity? Suppose the person accused of this offence to be guilty, is there any necessity that all the constitutional forms of justice shall be trampled under foot, and that the object of the publication shall be made the judge in his own cause? There is not the least. All the citizens of this country are equally under the protection of the laws. If a libel is published against me, I can have the author of it punished by an impartial court, through the agency of a grand and petit jury. Is there any necessity that a judge who has been libelled should have the power to dispense with this rule, and to call the libeller before him, and inflict what punishment he may think proper? Why should this be so? If punishment be inflicted for the sake of example, it would be a much more solemn and impressive warning to have such a libeller indicted by a grand jury, convicted by a petit jury, and sentenced according to the ordinary rules of law, than to have him punished in a summary manner by the very person against whom the offence was committed. Such an example will always operate powerfully in a way directly the reverse of that which was intended. There is a spirit in this country, and I trust that spirit will ever prevail, which rebels against arbitrary power. Such an example, instead of sustaining that judge before the people, will never fail to enlist the sympathy of the community in favor of the victim of his oppression.

But on the other hand, let us view the effect of the legitimate exercise of punishment for such an offence. A calm, upright and dignified judge is libelled. He does not appear as the accuser. The public prosecutor, in the discharge of his official duty, takes up this offence against the laws, and the state becomes the party in behalf of the judge. The libeller is tried by a jury of his peers, he is convicted and sentenced, and the whole spectacle is calculated to impress the public mind and sustain the judicial dignity and authority. The man is marked as an atrocious libeller, and the example has a powerful effect on society. In its moral power

one such example is worth a hundred such as Judge Peck has exhibited to the world.

Ay, but the delay! the delay! And what does this amount to? Can there be any difference in the effect whether a libeller is punished on the day after, or three months after, his offence has been committed? In most cases a judge, who knows he can stand upon the weight of his own character, will not suffer a prosecution to be commenced; but if there be any necessity for it, the offender can be punished within three months, in almost every state of the Union. Am I to be told that a libel against a judge is so atrocious an offence that he, with all his angry and indignant feelings fresh upon him, must be permitted to punish the offender without delay? It is ridiculous. This doctrine has been applied to such cases by a fancied but false analogy. In the case of a jury there can be no delay. It is of indispensable necessity to bring in the jurors upon an attachment, that the business of the court may proceed. The same rule holds with respect to witnesses. The subpœna of the court must be obeyed, and all resistance be put down by summary process, otherwise a cause could never be tried. The same necessity exists in all other cases within the legitimate range of this power. But when the doctrine is transferred to libels against the judges, there is neither reason nor justice in proceeding in this summary manner. The judge, whose reputation would suffer between the offence and its punishment by the ordinary course of law, has no character worth preserving.

I would, (if it should not be deemed presuming,) cite the example of my native state. No such power has been claimed there on the part of the judiciary since 1803, and its exercise has been expressly prohibited since 1809. For nearly thirty years we have heard of no such proceeding; and yet I will undertake to say, that there is no state in this Union where a more habitual regard is manifested by the people to their courts of justice of every description. Since the Act of 1809, I have not heard of a single libel against a judge in relation to a cause pending in all that Commonwealth,—no, not one. Before the exercise of this usurped power was prohibited, cases of the kind were frequently occurring; and such will ever be the case, from the nature of man. A claim to the exercise of arbitrary power will ever meet with resistance in the human breast. It is a natural feeling, and when it shall be banished from the hearts of Americans, we shall no longer be worthy of freedom.

To show how far the power of punishing contempts is necessary, and what barriers ought to be erected against it for the preservation of personal liberty, I shall read to this Court the opinion of one of its members, whose name and whose fame as a jurist, have long been known to the American people. He places the entire subject on its true ground. To be sure, he is stating not what was the law of Louisiana, but what it ought to be. But in regard to the courts of the United States, what the law ought to be, it is. The inherent powers of these courts extend just so far as they are needed to carry into effect the purposes for which they were created. If the distinguished author of the work, at the time he wrote it, had foreseen the conduct of Judge Peck, as exhibited upon this trial, he could not have painted it and its dangerous consequences more truly than he has done, in the extract which I shall read.

"The power of punishing for contempts, in the extent to which it has been carried, it is believed has never been justified but by the plea of necessity. Its repugnance to all the fundamental principles which secure private rights in the administration of justice, is so apparent, that no other argument can possibly be used. The offence is the showing a contempt for the court. Of all the words in the language, this is, perhaps, the most indefinite. Every thing, that can, by any process of reasoning, be considered as a disrespect to the court, is a contempt. Blackstone enumerates seven different species of consequential, as contradistinguished from direct contempts, each of them comprehending a countless number of different acts, as distinct from each other in their nature, as all of them are from contempt, according to its strict definition. For instance, the second division of consequential contempts comprehends those committed by sheriffs, bailiffs, and other officers of the court, by receiving the parties—by acts of oppression—by culpable neglect of duty, &c. In short, there is nothing, from an indecorous gesture, or a rude hasty word, up to the most violent opposition to legal authority, that cannot be brought within the purview of the law of contempts. Printing a false account of the proceedings of a court, (or a true account while the suit is pending, without permission,) as well as speaking, or writing contemptuously of the court—treating a piece of paper, under its seal, with disrespect; and, to sum up all in the words of the apologist of the law of England, anything that shows a gross want of regard and respect.

"Now I put it to those who contend that this power ought to be vested in courts,—I put it to them to say, what is the conduct that will secure a man against its exercise in the hands of a vain or vindictive judge?

"'A want of regard and respect!'—but regard and respect cannot be commanded but by moral conduct, and not always by that. The most correct conduct will not always secure it; the feeling is involuntary, and cannot be punished. But you must not show that you want it; it is the demonstration that is culpable. But how shall I avoid showing it? When in my own defence, or in the prosecution of my right, I differ from the judge, and show that the opinion he has given is absurd, certainly I treat him with very little regard or respect. I can feel none for a man who, by some miserable sophistry, deprives me of my right; and if I expose it to the world, I show my want of respect: but a want of respect is a contempt; I am, therefore, liable to be punished for defending my right in the only way that justice requires it should be defended. Oh, say the advocates of this tyrannical power, you must distinguish; attack the argument of the judge as much as you please, but say nothing disrespectful of the court. But what jesuit will teach me how I may tell a court, that it has decided against the plainest principles of law, without showing that I think they have been ignorant, careless, prejudiced, or worse? When I know, that by reason of either of these faults they are about to deprive me of my fortune or my life, can I feel 'regard or respect?' When I state the reasons by which I demonstrate it, do I not, (clothe it in what language I will,) do I not make that want of regard manifest? and is not this (according to the very terms used by the author I have quoted) a contempt? It is amusing to observe the expedients which have been resorted to, to reconcile things that are irreconcilable—great respect for the judge and contempt for his opinion—professions of the highest veneration and regard coupled with allegations that show the speaker can feel neither—introducing, among other evils, a fawning, hypocritical cant, equally unworthy of the suitors and the judges.

"An offence, so ill defined, so liable to be imputed, embracing such a variety of dissimilar acts, would be dangerous and oppressive in the extreme, were it to be prosecuted according to the ordinary forms of law; but all these are disregarded; none of them are preserved, and the plainest letter of the constitution is violated in its most sacred provisions. It declares, that in all

criminal prosecutions the accused shall have the right of meeting the witnesses face to face, nor shall be compelled to give evidence against himself. Yet process of attachment for contempt issues on an affidavit, and when the defendant is brought in, it is not to meet his accuser face to face, but in direct defiance of the constitution to 'give evidence against himself,' if he be guilty, under the penalty of being punished for a 'high and repeated contempt.' The punishment by our statutes is limited to fine of fifty dollars and ten days' imprisonment; but from the case cited in the note, it appears that the Spanish laws are still in force, unless there is an express repeal or incongruity between them and our statutes. With respect to counsellors and attorneys, there is such express repeal, but in no other cases. Now in the variety of offences created by the Spanish statutes, many relate to courts and judges, and to their officers and process; all these, by the sweeping definition of contempts may be properly considered as such; and as the Spanish law has been decided not to be repealed by our law of contempts, the aggravated punishment may, in those cases, be inflicted as it was in the one referred to in the note. But without this, if the punishment is confined to that directed by our statute—is that nothing? Is it nothing to be deprived of liberty for ten days, without conviction—without jury? Is it nothing to be forced to give evidence against yourself? The magnitude of the punishment is comparatively of little moment. It is the principle that is dangerous. A free citizen ought never to hold his liberty, even for an hour, or the slightest portion of his property, at the will of any magistrate. But those I have noticed are not the worst features of this species of punishment. Vague and uncertain as is the definition of the offence, yet if impartial persons were appointed to decide, whether any given word, look, or gesture, was contemptuous, there would be some security (a slight one, I grant) against oppression, but as if it were to make this example one in which every principle of correct procedure was to be violated, the person offended is constituted the only judge—the judge without appeal; and lest his resentment should have time to cool, he is armed with the power of summary process—and if he want evidence, he may force the defendant to produce it. Let it not be said, as it sometimes is, that this is an advantage; that the defendant may, by his answers to the interrogatories, exonerate himself. Not so. In the case of contemptuous words, (and I see no reason why it should not extend to acts also,) if he admit the speaking or the

writing, the court have the right to judge of the intent as manifested by the words; and although the party should deny any disrespectful intent in the most unequivocal terms, the court may declare that the answer is false, and proceed to impose the punishment; and this power is given too, in the very cases where it ought to be withheld. If it were confined to cases of actual injury, not only would the offence be more susceptible of proof—not only would there be a corrective in public opinion, which could be fixed upon the question, whether the injurious act had been committed or not; but the passions even of the party injured, if he were constituted the Judge, would be less liable to be roused. It is a trite, and therefore a probably true observation, that men forgive injuries much sooner than insults. Judges (although by vesting them with this power we treat them as angels) are men; their passions will be more readily roused by real or fancied insults than they would be by injuries; and nothing can be more at war with justice than passion. Another evil (there is no end to them) is, that from the nature of the crime, its existence must depend on the temper of the Judge who happens to preside. Words, which a man of a cool and considerate disposition would pass over without notice, might trouble the serenity of another more susceptible in his feelings or irritable by his nature. There is no measure for the offence, but the ever variable one of the human mind. The judge carries the standard in his own breast; and if, by close observation, you have discovered its probable dimensions, your work is but begun, for every succeeding magistrate has his own scale for the weight of an offence, his own measure for the extent of the punishment.

"I do but waste the time of the honorable body I address, in showing the dangerous nature of this undefined power; for its apologists cannot hide its hideous features. Blackstone acknowledges, that it 'is not agreeable to the genius of the common law in any other instance;' but he does not attempt to justify it even from necessity, and contents himself with showing that it is of 'high antiquity, and by immemorial usage has become the law of the land;' that is to say, that it is common law, and as that is the perfection of human reason, that it must be good. But here, where we are not satisfied in general with this reasoning, as summary as the process it is used to defend—here, and on this occasion, when we are inquiring, not what is, but what ought to be the law—here some other argument must be used to show that we ought to adopt or continue this oppressive

absurdity; and that argument is found in a single word—necessity. In the present improved state of human intellect, people do not so readily submit to the force of this word as they formerly did. They inquire—they investigate—and in more instances than one, the result has been, that attributes before deemed necessary for the exercise of legal power, were found to be only engines for its abuse. Not one of the oppressive prerogatives of which the crown has been successively stripped, in England, but was, in its day, defended on the plea of necessity. Not one of the attempts to destroy them, but was deemed a hazardous innovation. Let us examine whether this power does not partake of the same nature.

"A recurrence to the great principle of self-defence, which we have in a former part of this report developed, will serve to show with some certainty, as it is thought, to what extent this power is necessary or proper—society has, if our reasoning be correct, the right of self-defence. Every department created by that society for its government—every individual composing that society, has the same right, defined to mean the right of defending existence, and the operations necessary to existence. But society, as the superintending power, must have for the purpose of securing these and all other rights belonging to departments and to individuals, the further power to punish. Society alone has this right. Try the law of contempts by this simple rule. Courts of law are the organs of one of the departments of society; and, to avoid confusion, we will select for one example courts of exclusively civil jurisdiction; such courts have the right to defend their own existence, and to repress every thing that interferes immediately with the exercise of their legal powers. They have this right, as a legitimate part of society, by the principles of natural law; and if it be curtailed by any constitutional provision, it is a great defect, because self-preservation very frequently requires immediate efforts that would make an application to any other power ineffectual. Every thing, then, that is necessary and proper to defend its existence, and secure the free performance of its functions, can with no greater propriety be denied to a court than there would be in forbidding an individual to defend his life against the attack of an assassin. But neither the court nor the individuals have necessarily the right to punish, either after the attempt has been repelled or after it has been carried into execution. That is the duty and the right exclusively vested in the whole society. An individual has the right to de-

fend himself against an attack upon his liberty or life; but after he has successfully resisted it, he has no right to punish; yet liberty and life are considered as sufficiently protected by this limited power. Courts of justice have the same right to repel all attempts to interrupt the performance of their functions. They are incorporeal beings, whose existence is only in the performance of their functions—that is their life—that is their liberty. They are, or ought to be, armed with every power necessary to defend them. Noise, interruptions, violence of every kind, must be repressed; obedience to all lawful orders, which are necessary for the performance of their functions, must be enforced. Thus far the law of self-defence goes, but no further. Is the violence over—has the interruption ceased—is the intruder removed—has the order, which was disobeyed, been complied with?—Here the power of the incorporeal being, as well as that of the individual in the analogous case, ceases, and the duty of the sovereign power begins. That alone must punish—that alone can define offences and fix the penalty for committing them. An infringement of the legal rights of a court of justice is an offence, and that government is radically defective, which places the power to punish it in the hands of the offended party. Here, then, we find the limit of that necessity which is so much insisted on, and so little understood. There is a necessity that courts should have the power of removing interruptions to their proceedings, because, unless they can perform their functions, they cannot exist; but there is none that they should have the power to punish those interruptions; the laws must do that, by the instrumentality of the courts, but in the form prescribed by law.

"If the argument has been as clearly expressed as its force is felt, it must be convincing to show, that all those offences, distinguished by the name of contempts, ought to be banished from our penal laws which they disfigure by the grossest departure from principle; that courts ought to be empowered to remove all obstructions to their proceeding; that all those acts, as well as those tending to interrupt the course of judicial proceeding, to taint its purity, or even to bring it into disrepute, should be punished only by the due course of law; and that proper punishments, inflicted by the regular operations of law, will deter from these acts much more effectually than the irregular agency of the offended party, who sometimes, from delicacy, will abstain from enforcing the penalty of the law—sometimes, from the indulgence of passion, will exceed it.

"It is on these principles that this part of the code has been framed. It vests ample powers of repression in the court. They may remove every interruption to their proceedings; they may enforce prompt obedience to their orders; they may, if simple removal is not found sufficient, restrain by imprisonment; and after this, a regular trial and punishment follows for the offence. Here is no angry altercation. All is done with the composure necessary to the dignity of justice. The judge is not the accuser; the accuser is not the judge. All that class of offences too, which consist in insulting expressions, are provided for. But here again an impartial jury decide, as well on the nature of the words as on the intent with which they were used. The Judge cannot improperly indulge his feelings, or restrain them, to the injury of public justice; and the offender against laws for preserving the order and dignity of the judiciary, is liable to the same penalties, entitled to the same rights, and judged by the same laws, that apply to other offenders.

"This chapter, then, far from derogating from the respect due to the judiciary, is calculated, in all its provisions, to enforce it; and the insinuation, that its author could be actuated by any hostility to that department, is not only groundless but absurd. If, indeed, it is hostility to a department of government to desire that none but its proper powers should be vested in it by law, or still less, should be exercised without law; if it be hostility to the judiciary to divest them of the odious accumulation of the offices of judge, party, legislator, and accuser, in the same person—to protect their functions in their exercise, and punish all attempts to interrupt them—then is this chapter dictated by a spirit of the most determined hostility."

I shall not add a single word on this part of the subject. The proposition is here conclusively established, that the exercise of such a power is not necessary, and therefore cannot be inherent.

I shall now proceed to prove, that the power claimed and exercised by the respondent is in direct violation of the letter and spirit of the constitution. In order to demonstrate this proposition it is only necessary to contrast the provisions of the constitution with the proceedings of the Judge against Mr. Lawless. The constitution declares that, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." What does this mean? Does it not extend to all criminal prosecutions? And is it not established that the prosecution of a libel as a contempt is a criminal prosecution?

In criminal prosecutions the rights of a citizen are never to be taken away, without a *trial by an impartial jury*. Impartiality is the attribute peculiarly required. But what does the law of contempts, as administered by Judge Peck, declare? That the dearest rights of a citizen may be taken away without any trial by jury, and by the sole authority of an angry, offended, and therefore partial judge. Need I add another word?

Again; the constitution provides, that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces," &c. In England, where the power of punishing libels against judges as contempts came to the King's Bench from the Star Chamber, a man may be prosecuted criminally upon a mere information filed by the law officers of the crown. But the constitution of the United States explodes this doctrine, except in cases arising in the land and naval service. In all other cases a grand jury must pass upon the accused, before he can be brought to trial. So careful has the constitution been of the liberty of the citizen, that it has blotted out forever the proceeding by information; although before any punishment can be inflicted, even by this mode, a petit jury must first have found the accused to be guilty. But what is the process in the case of contempts? Without either an information or an indictment, but merely on a simple rule to show cause, drawn up in any form the judge may think proper, a man is put upon his trial for an infamous offence, involving in its punishment the loss both of liberty and property. He is deprived both of petit jury and grand jury, and is tried by an angry adversary prepared to sacrifice him and his rights on the altar of his own vengeance.

The constitution declares, "that no person shall be compelled, in any criminal case, to be a witness against himself." Now I ask can the English language furnish plainer words than these? Did not the respondent know when he called upon Mr. Lawless to answer interrogatories upon oath, and on his refusal inflicted an additional punishment, that the constitution protected him against any such inquisition? If the constitution does not apply to a case of this kind, in the name of Heaven, when or where will it apply? By the common law of England, the refusal to answer interrogatories is itself "a high and repeated contempt, to be punished at the discretion of the court," and so thought Judge Peck; but the constitution interposes its protection, and secures the citizen against being called upon to answer. Even the

courtly Blackstone, the apologist of every abuse under the British government, declares "that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance." 4 Com. 287. Now I verily believe that when the framers of that sacred instrument inserted in it the provision, "that no person shall be compelled, in any criminal case, to be witness against himself," they had this very case of contempt full in their view. The power which they have forbidden did in this case exist in England; but even there it "is not agreeable to the genius of the common law in any other instance." What case so proper could they have had in view when they inserted this clause? They could never have intended that, notwithstanding the provision, unless the accused would humbly crouch at the foot of judicial power, and swear that he had no intention to give the slightest offence to the judge, he should be liable to be severely punished. Such a doctrine would be repugnant to every feeling of a freeman.

Even the miserable pretext which existed for exercising this power in Pennsylvania and Tennessee, that the constitutions of these respective States had sanctioned a pre-existing "law of the land," which prostrated the barriers erected by these very constitutions for the protection of civil liberty, has no existence here. No law of the land for the United States existed previous to the adoption of the federal constitution. It declares that no man shall be compelled to bear witness against himself on a criminal charge; and I put the question home to each member of this high and honorable court, whether the language must not be construed to extend to cases of this nature. Is there anything else to which the provision can apply? This odious inquisition must certainly have been intended, as there is no other criminal accusation on which a man can, even by the common law, be required to bear witness against himself.

Let me here bring into the view of the Senate a fact on which I shall comment hereafter. The counsel has told us that at first Judge Peck only intended to suspend Mr. Lawless; but in consequence of his refusal to have interrogatories filed, and answer questions upon oath, which might require him to bear witness against himself, and of his reading a paper to the court in the character of a protest or bill of exceptions, his punishment was aggravated by the disgrace of imprisonment.

[Mr. Wirt.—I spoke from the evidence.]

Yes, sir. With this constitutional charter in his hand, the Judge has branded Mr. Lawless with infamy, (so far as his sentence of imprisonment could do so) for refusing to give evidence against himself. But I shall treat more fully of this point hereafter.

The constitution further provides, that no person for the same offence shall be twice put in jeopardy of life or limb. But by the law of contempts, after a judge has first wreaked his own vengeance on the accused for the offence, considered as a contempt of court, the unhappy victim may afterwards be indicted for a libel, and thus again punished for the same offence.

The constitution of the United States does not contain the provision, which is to be found in almost every State constitution in the Union, that upon prosecutions for a libel, the truth may be given in evidence. The reason of this omission doubtless was, that as this instrument did not confer upon Congress any power to punish libels, there was no necessity for the introduction of such a clause. If the power exercised by the respondent does exist in the courts of the United States, I presume no man will be hardy enough to contend that the truth of an accusation against a judge cannot be given in evidence in a summary prosecution for a contempt. What a spectacle would then be presented on such a trial! For example, I believe that a judge has in a certain cause decided absurdly, (and such a thing we know may happen.) I review his decision in one of the public journals, and prove that he has shown himself to be a weak man; or I charge him with having been wicked and partial. If such be the fact, I have a right to establish it anywhere, and the truth everywhere ought to protect me from punishment.

I am called before this very judge, charged with a contempt of court, and the only issue to be tried by him is whether he himself is not weak or is not wicked, whether he has not made an absurd or a partial decision. What an exhibition would this be in a land of liberty! Could it ever have been intended to confer a power so absurd and so dangerous upon an American court of justice?

I now advance a little further in this argument, (although it is astonishing to me that any argument on such a subject can be necessary.) That sacred ægis—the liberty of the press—a right which Congress, if they would, could not, and if they could, dare not infringe—shields every citizen of this land from the blow of such judicial tyranny. No free government

can long exist without a free press. Power is constantly stealing on. One implication involves another, until liberty may be lost before the people know it is in danger. To preserve this invaluable boon, it ought to be watched with greater jealousy than ever was excited by the fabled guardian of the Hesperian fruit. Its safest protector is a free press; and the constitution of the United States has therefore declared, that "Congress shall make no law abridging the freedom of speech, or of the press." What was the intention of this provision? The framers of the constitution well knew, that under the laws of each of the States composing this Union, libels were punishable. They, therefore, left the character of the officers created under the constitution and laws of the United States to be protected by the laws of the several states. They were afraid to give this government any authority over the subject of libels; lest its colossal power might be wielded against the liberty of the press. They have guarded it with a wholesome and commendable jealousy.

In open violation of this provision, the sedition law was passed in 1798. This law, after having destroyed its authors, expired in March, 1801, by its own limitation. The gentleman who first addressed the court in behalf of the respondent has mistaken the argument of the managers in relation to this law. None of us ever contended that it was cruel and unjust in its provisions. It was more equitable than the common law, because in all cases it made an indictment necessary, and it permitted the truth to be given in evidence. The popular odium which attended this law was not excited by its particular provisions, but by the fact that any law upon the subject was a violation of the constitution. Congress had no power to pass any law of the kind, good or bad. It is now, I believe, freely admitted by every person, (I at least, have not for several years conversed with any man who held a contrary opinion) that Congress, in passing this Act, had transcended their powers. I have no doubt that the motives of many of those who passed it were perfectly pure; but yet if any principle has been established beyond a doubt by the almost unanimous opinion of the people of the United States, it is that the sedition law was unconstitutional. Such is the strong and universal feeling upon this subject, that if any attempt were now made to revive it, the authors would probably meet a similar fate with those deluded and desperate men in another country, who have themselves fallen victims upon the same altar on which they had determined to sacrifice the liberty of the press.

Well, sir, and what then? It is contended by the respondent that although Congress could not bestow upon the courts of the United States the power of trying and punishing libels, yet that by implication he may exercise this authority and dominion over all men who may dare to discuss his pretensions in the public newspapers. That power which the legislature who created him could not confer upon him by express grant, he exercises by implication.

Shall then a petty judge—a petty provincial judge, (if it be lawful to use such language after the rebuke my colleague received) although Congress itself dare not pass a law for the punishment of libellers against its own members, or the President of the United States, be permitted to sit as the sole judge in his own cause, and, in palpable violation of the constitution, fine and imprison at his own pleasure the author of a libel against himself? When the express power cannot be delegated, shall he take it by implication? Shall courts of justice exercise a power as a bare incident, vastly beyond what their creators could confer upon them?

If all courts do possess this authority, it may be wielded with vast power as an engine for the destruction of our liberties. We have always had in this country, and I suppose we shall always continue to have, angry political discussions. It would seem that such storms are necessary to purify the political atmosphere of the Republic, (though they are sometimes much more violent than agreeable.) Let me illustrate my views by putting a case in reference to the so much agitated question of our relations with the Southern Indians. This question has awakened intense feeling throughout the Union, and I doubt not has given birth to much honest difference of opinion. Some believe the President to be right in his views upon the subject, and others that he is entirely wrong. It would not become me here to express any opinion. But suppose the President of the United States were to institute suits against some one of the editors, who have attacked his character and assailed his motives, in relation to his conduct on the Indian question, what might be the consequence? The question then to be settled by such a suit would be, are these attacks true or false? Now you could not take up a paper in the District of Columbia, which would not contain one or more articles discussing the general question, and having a direct bearing upon the public mind in relation to the cause pending. These publications upon the principles on which Judge Peck acted would

all be contempts of court. You might as well attempt to stop the flowing tide, lest it might overwhelm the temporary hut of the fisherman upon the shore, as to arrest the march of public opinion in this country, because in its course it might incidentally affect the merits of a cause depending between individuals.

Sir, is this a fancy picture? When a man, so distinguished as to be a prominent candidate before the people of the United States for the highest office in the country undertakes to redress his wrongs by an action for a libel, he attaches to himself the whole politics of the country, and thus all the publications in the papers of the United States on the subject out of which the suit arose are converted into contempts against the court in which it is pending.

I know something about a Governor's election in New York and Pennsylvania. The liberty of the press is on such occasions carried to its utmost limits. Charges are very freely made and very freely urged against the opposing candidates; and all the people of the state are deeply interested in knowing their truth or falsehood. The candidate who fears the public discussion of any charge made against him has nothing to do but bring a suit, and then according to the doctrine of contempts now asserted, all future publications upon that subject become contempts of court, and may be punished with severity by the judges before whom the action is depending. The current of public opinion must be stopped—the merits or demerits of the candidate must not be discussed—there must be an awful pause to await the event of a little libel cause in an inferior court. Such a doctrine cannot exist in this country. Carry it out to its practicable consequences and it becomes appalling. By a politic application of it, every judge in the land may become the tool of Executive power, or the instrument of preventing all attacks against his political favorites who may be candidates for office. These are not mere fanciful cases. They may occur in practice; and if the power should be sanctioned and established by the decision of this court, the day may arrive when it will be resorted to for the most dangerous purposes. The time may come, when it shall be considered very necessary and proper to shield some future President from public discussion by the exercise of this power.

Why, sir, at this very time, from one end of the Union to the other, we find the public papers of a particular complexion ringing with attacks on the character and conduct of the Chief

Justice of the United States, in relation to the Indian question now pending before the Supreme Court. I think these attacks are unjust, but to check them, would you silence the public press? Would you say that the Supreme Court ought to drag before it every editor in the country, and thus put an end to the discussion? I know that even if the court possessed this power, it would never be invoked by the present chief justice—a man upon whom any eulogy of mine would be lost. But if he resembled a Scroggs or a Jefferies, (and such men may yet hold that office) he would never rest content until he had inflicted vengeance, through the agency of this power, upon those who dared to attack his judicial character.

I have been considering the consequences of this power in regard to cases pending; but it would be infinitely worse in its application to cases which have been decided. The Supreme Court of the United States is vested with power, in the last resort, to construe the constitution. Constitutional questions are brought before it almost every term, involving great and extensive interests and in some cases the rights of sovereign states. Its jurisdiction is co-extensive with the Union, and from the very nature of things its decisions must agitate and inflame large masses of the people of this country. Judgment is pronounced, and the reasons for it go forth to the world in the form of an opinion. Is not this opinion as fair a subject of criticism as any other public paper? And will not and ought not such opinions to be freely criticized as long as liberty shall endure in this country? And yet upon the principles which governed the respondent's conduct, the Supreme Court possess the power to bring all the editors throughout the Union before them, who have dared to impute errors to their opinions, and punish them by fine and imprisonment at their pleasure. The bare attempt to exercise such a power would convulse the people of this country.

I recollect a case in my own state, which may serve to illustrate the absurdity of this claim of power. The Chief Justice of Pennsylvania delivered an opinion, that the Supreme Court of that state had no right to declare a state law unconstitutional. A United States judge took up this opinion, and in one of the periodicals of the day handled it very severely; more so, beyond all comparison, than Mr. Lawless criticized the Opinion of Judge Peck. If such a power had existed, here was a case for its exercise. The Supreme Court might have brought the District Judge of the United States before them on an attachment, and sentenced

him to fine and imprisonment for scandalizing the chief justice, and endeavouring to bring him into odium and disgrace before the people.

If a judge be corrupt or partial in his judicial conduct, or should chance to be a fool, (a case which sometimes happens) it is not only the right but the bounden duty of his fellow-citizens to expose his errors. If a man should be notoriously incompetent for the judicial station which he occupies, though this may be no ground for an impeachment, yet it is a state of things on which the force of public opinion may rightfully be exerted, for the purpose of driving him from the bench. I admit that the case ought to be an extreme one to justify such a resort. But then, if this power to punish libels does exist, a judge may decide as he pleases without regard either to honesty or law; and then silence the public press in relation to his conduct, by denouncing fine and imprisonment against all those, who shall dare to expose the errors of his opinion. In such a case, upon the hearing before the judge, the greater the truth, the greater would be the libel. A weak judge, when his capacity is called in question, would always be the most cruel and oppressive.

As I have already referred to the Supreme Court of the United States, let me do it again. That illustrious tribunal, in the honest and fearless discharge of its duties, has come into collision with many of the States of this Union—with Pennsylvania, with Virginia, with Georgia, with Massachusetts, with New York, and with Kentucky. It has been abused and vilified from one end of the continent to the other. This has been its history since the foundation of the federal government. Has any man ever heard that the judges of this court claimed the power of punishing these revilers in a summary manner by fine and imprisonment? Have we, at any period of its history, heard the slightest intimation to that effect from any of these men? Not one. That court has often been in the storm. It has been assailed by the winds and waves of popular opinion; but it has gone on in an honest and fearless course, and trusted for a safe deliverance to the good sense and patriotism of the American people. That tribunal needs no such power as has been claimed by this judge in Missouri, and has never thought of resorting to the arbitrary and vindictive conduct, which has brought him to your bar.

I trust I have now succeeded in proving, that the courts of the United States can neither derive this power from the common

law, nor from the Judiciary Act of 1789, nor from necessity; and that its exercise is in direct violation of the Constitution of the United States. Another question now presents itself, on which it may be proper to make some additional remarks.

Had Judge Peck power in this case to suspend Mr. Lawless from practising his profession? It is of importance to us who belong to the bar to know whether or not—and to have the decision of this Court upon the question. If he had, the members of a profession which has ever stood foremost in this country, in the defence of civil liberty, are themselves the veriest slaves in existence. I believe that I have as good a right to the exercise of my profession, as the mechanic has to follow his trade, or the merchant to engage in the pursuits of commerce. I want then to know whether henceforward I must humble myself and become the sycophant of a judge, whom I may despise, under the penalty of being deprived of the right to practise my profession before him. If a judge be weak, or if he be wicked, his judicial conduct is as fair a subject of discussion among lawyers, as among any other class of citizens; and for exercising this right they incur no punishment, which cannot be inflicted on any other person. If this proposition be not true, they become the mere creatures of the court. Instead of being the firm and fearless asserters of their clients' rights, often in opposition to the preconceived opinions of the bench, they must cringe and assent to any and every intimation of the judge at the risk of their ruin. The public have almost as deep an interest in the independence of the bar as of the bench. The rights of the citizens, under the complete systems of modern times, can only be asserted and maintained through the agency of the profession.

Members of the profession may forfeit their right to practise, but this can only be done by the commission of some professional offence, or some crime of so black a character as shows them to be wholly unworthy to be trusted. For other offences they are subjected to the same punishments as their fellow citizens. Their official and their private acts are entirely distinct from each other. To show that Judge Peck had no right to suspend Mr. Lawless, I need not go further than 2d Petersdorff's Abridgment, 615, the book cited by the judge himself. It proves conclusively that the high prerogative of striking an attorney from the rolls has never been exercised, even in England, except for grossly dishonest professional misbehavior, or on a conviction of felony or other infamous crimes. This power has never been

resorted to except in extreme cases. I admit that if, in this country, where the two professions of attorney and counsellor are generally united in the same person, an attorney, in open court, will manifest by his conduct a total want of respect for the judges, and will pursue a course tending to obstruct the public business before the court, they must from necessity, possess the power of suspending him from practice. But it is not pretended that Mr. Lawless has brought himself within this rule. Was it ever heard of in England, that an attorney was stricken from the rolls of the court for writing and publishing strictures, no matter how severe, upon the opinion of a judge? The research of the learned gentleman has not furnished us with a single case from the English books, nor a single dictum to that effect. If I write and publish an article which a judge may choose to consider as a libel upon himself, is it not enough that he may appeal like other citizens to the laws of his country for redress, and have me fined and imprisoned for the offence? Shall he be permitted to take the law into his own hands, and add to this punishment a forfeiture of my means of subsistence, by taking away from me my profession? Even the punishment of a libel as a contempt, by fine and imprisonment, would be mercy when compared with this power.

The judge, in the same rule against Mr. Lawless, has embraced two things of an entirely different character. No two subjects can be more distinct, in their nature, than a rule to show cause why an attachment should not issue for a contempt, and a rule against an attorney, to show cause why he should not be stricken from the rolls. In the first case, the court must proceed without delay. Its process, or its lawful command must be obeyed immediately, otherwise the progress of public business is arrested. If the order of the court be obeyed, either there is no punishment at all inflicted, or it is generally very slight. The suspension of an attorney from practice is of another character. The question, then, to be decided is, has his conduct been of such a character, as to require his expulsion from the bar? This is a question which need not be determined in a day or in a month. The spirit which dictated that provision of the common law, that the tools of an artificer shall not be distrained, ought to prevail upon such an occasion. When a man's all is at stake, or rather the means by which his all is acquired, there ought to be no haste in the proceeding, when no haste is necessary. But here this infuriated judge had decided, from the very first moment, that

Mr. Lawless should be suspended; and it has been alleged that it was not till after his refusal to answer interrogatories that he determined to add the ignominious punishment of imprisonment.

And now we come to the case of Judge Conkling, of which so much has been said. The eloquent counsel seemed to take so much pleasure in referring to the report of the judiciary committee, in this case, and to look at me with such significant glances, that I had not the heart to interrupt his pleasure by letting him know, that I had nothing to do with that report, having been absent from the city when it was made. I never saw the report until this morning, and till then was entirely ignorant of the principles on which it was founded. The gentleman on my left, (Mr. Storrs) was also absent, as I am informed, having declined sitting upon the committee, for personal reasons.

But I shall not leave this report of the judiciary committee here. The case now on trial before the Senate, and that of Judge Conkling, are totally dissimilar. The good lady, Mrs. Bradstreet, or rather Mr. Tillinghast, (I cannot tell which) charged Judge Conkling, before the House of Representatives, with no less than thirty-eight judicial offences. If we had brought such a list before this Court, and each of them were to consume as much time as the single charge against Judge Peck has done, we might be occupied for years in the trial. The judiciary committee were unanimous in rejecting thirty-six of these charges. Concerning the two which remained, relating to Mr. Tillinghast's suspension, there was a difference of opinion.

It seems that Mr. Tillinghast, in open court, upon the trial of a cause, had drawn a most odious and revolting picture of a judge, which was intended by him, and understood by others, to be a delineation of the judge upon the bench. This was a direct and palpable insult, publicly uttered to his face. The judge, however, either did not understand it as it was meant, or determined to disregard it and suffer in silence. Tillinghast, some time after the session of the court had terminated, in a private conversation with the clerk, acknowledged that he meant the picture for Judge Conkling, and confessed the intentional indecorum of his language. The clerk warned him against using such expressions; but notwithstanding, he requested the clerk to tell this conversation to Judge Conkling. On an affidavit of these facts, Mr. Tillinghast was brought before the judge, and on refusing to make an apology, was stricken from the rolls. For what? Was it for what he had said to the clerk out of court?

No: but it was for the character which he had drawn in open court, in connexion with the acknowledgment he had made to the clerk, that it was intended as an insult to the judge. Though a majority of the committee expressed no opinion as to the legality of the judge's conduct, I am now willing to do so, and to declare, that, in my judgment, it was illegal. If the picture when drawn was not so distinct in its features, as to be recognised by the judge, or if he, perceiving the intended resemblance, chose to overlook the insult during the whole term at which it was committed, the time had passed by, and the liberty of speech protected the offending attorney. The judge could not at a future term institute proceedings and strike him from the rolls, in consequence of any private conversation he might have had with the clerk after the adjournment of the court. This is my opinion: but I never should have voted for an impeachment in such a case. Thirty-six of the charges were so frivolous as to be rejected unanimously by the committee, and the remaining two arose out of conduct well calculated to irritate and wound the feelings of the judge, and to induce him unconsciously to pass the doubtful limits of the law in the punishment of the offender. From the circumstances of the case, I could not have supposed that an intention to transgress the law was so clearly established, as to justify this tribunal in convicting the judge. Yet I believe that he acted improperly; and such should have been my report. In justice to myself I will also observe, that I entirely dissent from most of the reasoning contained in the opinion which he delivered, at the time the name of Mr. Tillinghast was ordered to be stricken from the roll.

A case has been cited from New Hampshire, and I would hope that there must have been some mistake in the report of it which has been read to the Senate. As stated, it presents a case of arbitrary oppression towards a member of the bar, unequalled even in English history. The judge I know to have been a very respectable man, and it is therefore the more extraordinary. It seems that an attorney, whose name was Freeman, in a conversation at a public tavern, observed that Judge Livermore was very arbitrary, and that he abused the lawyers, the parties, and the witnesses. He also inquired whether the judge ever studied, and expressed a belief that he did not read his books. This was a mere idle, loose conversation. For this language, which was carried by some tale-bearer to Judge Livermore, he struck the attorney from the rolls. Sir, what have we come to? In what

state of society do we live, when such an act as this is cited before the highest tribunal of the nation, in justification of the conduct of a judge of one of the district courts of the United States?

I never had the pleasure of exchanging a word with the concluding counsel for the respondent, before the commencement of the trial; but I think I might venture to ask him, whether he had never, in familiar conversation, expressed opinions quite as derogatory to the character and attainments of judges, as those uttered by Mr. Freeman in relation to Judge Livermore. And who would endure it, that for such a conversation, the country should lose the distinguished professional services of that gentleman, and his family be deprived of his exertions for their support? (if they depend on those exertions, which I hope they do not.) Yet this case has been gravely cited to prove that Judge Peck had a right to punish Mr. Lawless by suspension.

As to the case from Tennessee; it probably arose from some misapprehension of the nature of the proceeding against Mr. Darby. The supreme court of that state, in their opinion, contend, that according to the doctrine of the English books, he had been guilty of a contempt, in publishing a libel against them; but instead of inflicting upon him fine and imprisonment, the only appropriate punishment for a contempt, they ordered his name to be stricken from the roll of attorneys.

[Mr. Grundy said, there was no proceeding in that case as for a contempt. Mr. Darby was stricken from the roll, on motion.]

Yes, sir; but the court placed it on the ground of a contempt. I understand that in that state the law gives to courts the express power to strike attorneys from the rolls; but whether in this case they exercised it properly, I neither know nor care. It can have no influence upon the present trial.

What was the character of the libel against the court, does not appear from the report of the case; but from what I have heard, I entertain no doubt it was of a very aggravated nature.

It is worthy of remark, that the court rested their power upon a provision in the constitution of Tennessee, similar to that contained in the constitution of Pennsylvania, which was used to shield C. J. M'Kean and the other judges, in the case of Passmore. The bill of rights, in both States, declares, that the accused shall not "be deprived of his life, liberty, or property, but by the judgment of his peers, *or the law of the land.*"

But in concluding this part of my argument, I would again observe, that not a single case has been produced from England,

(and if the counsel could have found one they certainly would have urged it,) in which the court of King's Bench, or any other court of that country, ever attempted to strike an attorney from the rolls, for publishing any thing derogatory to the court.

Having thus shown that the respondent has violated the constitution and laws of the country, I shall now proceed to discuss my second general proposition, which was, that he has done so with a criminal intention. This necessarily leads me into a discussion of all the material facts and circumstances of the case, as they have appeared in evidence.

[Here the court adjourned until tomorrow.]

Saturday, January 29, 1831.

The Managers, accompanied by the House of Representatives, attended. The Respondent's counsel also attended.

Mr. Buchanan resumed and concluded his argument on behalf of the United States, as follows:

Without again adverting to the points which I discussed yesterday, I will now proceed to prove that the publication signed "A Citizen," is harmless in its character, and does not present an unfair representation of the Opinion of the court; that it was such a publication as Mr. Lawless had a right to make, and that even if he were now on trial for it before a court and jury upon an indictment for a libel, he must be acquitted.

I know this part of the case will be from its nature uninteresting, but it shall be my endeavour not to be tedious; and as I feel very strongly that the position I have taken is susceptible of demonstration, I ask the attention of the Senate to the argument by which I shall endeavor to sustain it.

On the 3d of February, 1795, Antoine Soulard, to whom the concession was made which gave birth to the proceeding in the present case, was appointed by the Baron de Carondelet "Surveyor of all the Districts of Illinois and New Madrid." On the 30th October, 1799, Don Zenon Trudeau, the lieutenant governor of Upper Louisiana, appointed Soulard his adjutant, or as he is sometimes called "the right arm of the Governor." It appears he was a meritorious officer, and discharged the duties both of surveyor of the province and adjutant. In consideration of *his public services*, lieutenant governor Trudeau, on the 20th April, 1796, made him a concession for 10,000 arpents of land. The existence of this grant was not disputed on the final hearing of the cause before Judge Peck. The question of concession or no con-

cession had been previously submitted to a jury, and they found that such a concession had been made in favor of Soulard. This fact is therefore taken for granted in the opinion of the court. A survey was made on this concession, by Don Santiago Rankin, the deputy surveyor, on the 20th February, 1804, and was duly recorded. From the final decree of Judge Peck in the cause, it appears he was then satisfied of these facts; although he now endeavors to cast a shade of suspicion over both the concession and survey. To prove the accuracy of this statement, I shall here quote a few lines from his decree. "And it further appearing, by the finding of the jury impannelled to try the issue directed in this cause, that such concession was made to the said Antoine Soulard, as in the said petition is stated. And it also appearing in evidence offered on the part of the said petitioners, that a survey of the said land was made, and a plat thereof recorded, as in the said petition is stated," &c.

On the fourth Monday of December, 1825, the court entered of record its final decree against the claim of Soulard. The fundamental doctrine on which the Judge rests this decree appears upon its face to be, that the concession had not been made, in conformity with the regulations of O'Reilly, Gayoso or Morales, and that it was therefore "illegal in its origin and invalid." Now I apprehend, (though I am not going into any detailed argument on the subject) that the Supreme Court of the United States will not decide that these regulations furnished the only mode, by which a title to lands could have been acquired in Upper Louisiana. They have, I doubt not, been carefully examined by every member of the Court. I ask then does it not appear from their whole policy, as well as from their terms, that they were intended to apply to new settlers and their families—to emigrants;—and not to the old settlers—the ancient residents who were born in the province. Their policy is manifest. The Spanish government wished to encourage emigration from the British colonies, and afterwards from the United States to Louisiana. This is a well-known historical fact, and will not be disputed. With this view, these regulations provided for *the gift,* not for *the sale* of land. Onerous conditions, it is true, were imposed by Morales on these gifts; but still many people were induced to leave the United States and go into Louisiana, where land could be obtained for nothing. Now can it be supposed for a moment, that there existed no power in the governors of Louisiana to sell lands? or, what amounts to the same thing, to pay

for public services by grants of lands? Spain has for more than a century been a needy government. The resources from her mines have not been sufficient to supply her wants. Under these circumstances, it would be one of the strangest freaks of despotism that history records, if the hands of the governors and lieutenant governors of this province were so tied up, that they could not pay the public servants of the crown in lands which were plenty, instead of money which was scarce. I believe it will be found, on the final adjudication of this cause, that the laws of the Indies in relation to the disposition of the public domain, with such modifications as the situation of Louisiana rendered necessary, were in force, as well as the regulations of the governors and intendant. In this I may be mistaken.

Had Judge Peck suffered the decree which he pronounced to stand upon the reasons appearing on its face, whether they were right or wrong, we should never have heard of this impeachment. But he was not satisfied to permit it thus to remain. Months after the date of this decree, and after the cause had been removed from his court, and whilst it was pending in the Supreme Court of the United States, the Judge published in a Missouri newspaper a very long and elaborate opinion in support of his decision. This publication was made at the request of some members of the bar (though not of Mr. Lawless), and it appeared in the Missouri Republican, printed at St. Louis, on the 30th day of March, 1826.

You have all read this Opinion. I have read it over and over again. I have carefully examined it, paragraph by paragraph, yet I must confess that the precise extent to which the Judge has decided the questions he discusses is beyond my ability to determine. The propositions run so much into each other, and there is such a want of precision throughout, that I believe few lawyers in the country would undertake to say, in every particular, what the Judge did decide. In this sentiment I know that I do not stand alone.

But although any accurate analysis of the Opinion would be a work of much difficulty, it is easy to perceive that the Judge intended to cut up every Spanish land claim in Missouri by the roots. He does not leave one particle of ground upon which any claimant could rest a single hope. Their prospects, should all the principles of this decree be affirmed, must vanish at once into thin air. Instead of confining this Opinion to the case of Soulard, which was in several respects peculiar, he virtually

decided against every possible concession, which could have been made by any lieutenant governor. Such a publication appearing in a partizan newspaper, under the authority of Judge Peck, was well calculated to produce a strong excitement throughout the State of Missouri. What came next in order? On the 8th of April, 1826, the article signed "A Citizen" appeared in "the Missouri Advocate and St. Louis Inquirer." Was it improper in Mr. Lawless to touch this subject? I may be wrong, but I hold it to be the imperative duty of an attorney to protect the interests of his client out of court as well as in court. The case of Soulard had gone up to the Supreme Court on appeal. It had ceased to be a pending cause in the District Court of Missouri. The cause was then pending in the Appellate Court at Washington. In this state of things, the very Judge from whose decree the appeal was taken comes out with a publication, called an Opinion, which went to destroy the land claims of all the clients of Mr. Lawless, root and branch. Under such circumstances, I insist that it was not merely the right, but the duty of Mr. Lawless to reply. I should have considered him derelict in that professional fidelity to which he had bound himself by oath, if he had suffered such a publication to remain unanswered. The effect of his silence probably would have been to render his numerous clients throughout Missouri and Arkansas the prey of speculators. We have it from his own lips, that to prevent this consequence was his chief reason for publishing the article signed "A Citizen."

It seems, from the evidence in this cause, that Judge Peck has adopted a singular practice, which I hope is confined to Missouri. After he has made his decree, and the cause is removed to an Appellate Court to be decided upon its merits, and whilst it is still pending there, he has got into the habit of publishing his Opinions in the newspapers. This is not the practice with us in Pennsylvania, though it may be elsewhere. Wherever it may exist I cannot but consider it a very bad practice; and I hold it to be the right of any attorney in such a case fully and freely, though in respectful language, to discuss the merits of such an Opinion. A judge surely has no peculiar right to spread his opinions before the world, particularly in a cause still pending in another tribunal, without being subject to have them examined and answered. If he will go into the newspapers, before the Appellate Court has either set its seal to his decision, or has reversed it, he must expect to receive newspaper play. He would best consult his dignity by waiting until the cause is finally decided.

Now I ask, is the article of Mr. Lawless a libel? I read in the English books that a publication attributing error even to Majesty itself, if couched in respectful language, is not a libel, although it be a fundamental principle of that government that the King can do no wrong. Vide 2 Campbell's Rep. 398. Holt's Law of Libels 109. 4 Blackstone's Com. 150, late edition. Although but a slender portion of liberty is enjoyed in that country compared with our own, yet the subject may discuss the public conduct of the King himself, and charge him with errors of judgment, provided no bad motives be imputed.

Every person must admit that the publication of Mr. Lawless is perfectly decorous, and every way unexceptionable in its language. This has not been denied throughout the trial. Indeed, considering his peculiar genius and temper, I am astonished he was the author of a production so dull, flat and uninteresting. It is wholly destitute of that zest, which a little spice of ill-nature would have communicated.

And can it be pretended that the article of Mr. Lawless attributes any bad motives to Judge Peck? Have the gentlemen ever contended that it did? Can any man who examines it say, that it contains one word or syllable or letter imputing or even hinting at any corrupt or improper motive?

But further, in England when mere error of judgment has been imputed to the King, even if it can be clearly shown that the author himself, and not the King, has been wrong; still such publication is no libel. All the subjects of the realm have a right to discuss questions of public policy; and they may charge his Majesty with as many errors as they think proper, provided no wicked or corrupt motive is attributed. This principle of the common law applies directly to the present case.

In regard to courts of justice, they need not be treated quite so tenderly as the monarch. In regard to them,—a writer may even censure their opinions without being guilty of a libel. "It is undoubtedly within the natural compass of the liberty of the press, (says Holt, in his Law of Libels, page 170) to discuss, in a decent and temperate manner, the decisions and judgments of a court of justice; to suggest even error, and, provided it be done in the language, and with the views, of fair criticism, to censure what is apparently wrong; but with this limitation, that no false or dishonest motives be assigned to any party." Now, judging the article of Mr. Lawless by this doctrine, if he were on trial on an indictment for a libel before the Lord Chief Justice of Eng-

land, he must be acquitted. He has attributed no bad motives, he has used no indecorous expressions. He has not censured the Opinion of the Judge. His whole publication consists in an enumeration of errors, which he thought he had discovered in that Opinion.

And has it come to this;—that in our happy country,—the home,—the chosen sanctuary of freedom, a mere suggestion that a judge is not infallible amounts to the crime of a contempt, and that the attorney who dares to make it may be fined, imprisoned and suspended from his profession? We are not obliged to show, that Mr. Lawless was right and the Judge was wrong on the points about which they differed in opinion. If we were, it is my impression, that in regard to most if not all of them, we could establish this proposition.

But it has been contended, that although Mr. Lawless in his publication may have neither used improper language nor attributed bad motives, yet he has misrepresented the Opinion of the Judge. Is this the fact? The manager who preceded me has gone over the first nine specifications of error contained in the article signed "A Citizen," and I shall briefly review the nine which remain.

The Judge himself, in his answer to the article of impeachment before the Senate has connected the tenth, thirteenth, and fourteenth specifications, and I shall so consider them together. They are in the following language:—

"10. That the complete titles made by Gayoso are not to be referred to, as affording the construction made by Gayoso himself, of his own regulations."

"13. That the complete titles produced to the court made by the governor general, or the intendant general, though based on incomplete titles, not conformable to the regulations of O'Reilly, Gayoso, or Morales, afford no inference in favor of the power of the lieutenant governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees."

"14. That the language of Morales himself, in the complete titles issued by him, on concessions made by the lieutenant governor of Upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations."

I think, upon the strictest scrutiny, that these three propositions will be found to contain a fair representation of the Opinion

of the Judge. Mr. Lawless, for the purpose of proving that the lieutenant governors of Upper Louisiana had the power to make concessions of land to the ancient inhabitants of the province, independently of the regulations of O'Reilly, Gayoso or Morales, and even at war with their provisions, invoked the very authors of these regulations themselves, and produced to Judge Peck these solemn and repeated acts, confirming titles which were founded upon such concessions. He proved by the conduct of the men who ordained these regulations, that they recognized another mode of obtaining grants of land, in Upper Louisiana, wholly distinct from that contemplated by their own ordinances. What more powerful appeal could be made?

The Judge in his Opinion expressly admits these facts, and states the argument of Mr. Lawless which was founded upon them. He says, (page 73) "but complete titles have been produced, to show, that, in some instances, the regulations have not been conformed to by the governor general, and by the intendant, in confirmations made by them; and it is thence insisted, that they were not in force in the province of Upper Louisiana, or that if they were in force there, they were only intended to provide for grants to emigrants and new settlers, and were not intended to provide for grants to the inhabitants generally; and that some law must be presumed, which authorized grants of land to the inhabitants generally, in pursuance of which the confirmations mentioned were made."

Now, what did the Judge decide upon these facts and after this argument? Did he not determine that these concessions of the lieutenant governors, thus perfected into complete titles by the governors general, afforded no sufficient rule of construction to guide the court to the conclusion, either that these regulations were not in force in Upper Louisiana, or if they were, that any other mode existed independently of them by which a title could be obtained? The effect of these concessions thus confirmed is explained away on the principle, that they must be considered as exercises of the dispensing power of the governors general in favor of individual grantees. They were acts of despotic power above the law, and therefore could not establish the existence of a power under the law. This was the very essence—the pith and marrow—of his decision.

In regard to these three specifications the Judge cannot complain, as he has of others, that they only present the naked point decided, without any of his reasonings or explanations. The

second specification expressly states, that the reason why these complete titles are not evidence of a rightful authority in the lieutenant governors to grant lands is, that they "must be considered as anomalous exercises of power in favor of individual grantees."

Here allow me to read one paragraph from the Opinion.

"That the governor general, who exercised a legislative power generally, and particularly for the distribution of lands, should feel himself authorized to dispense with the observance of any of the provisions of his own laws, is not strange. Such a dispensing power is incident to the legislative department of every government. Legislation implies discretion in respect of the rules which are to be prescribed. The governor general, with whom it was to exercise the power to make the law, could change it, or could dispense with its observance, either on his part, or on the part of the claimant; and it is probable, that instances of the exercise of this dispensing power were not rare. That he should have been influenced by the particular circumstances of any case not within the law, or even by personal considerations of regard, in making grants, not provided for by his own laws, is a presumption more to be relied upon than that which is contended for on the part of the petitioners."

Now, let any member of this Court examine these three specifications carefully, and I will venture to say he can find no misrepresentation in them. If there is, I am wholly at a loss to discover it. Yet the respondent, still under the dominion of those feelings, which have brought him to your bar, says in his answer before this Court, "that these charges are not true. So far from it, they are diametrically opposed, in point both of fact and doctrine, to the grounds really assumed and maintained by the court." Did the respondent suppose that by using such language he could give additional weight to his answer? Throughout the whole of it, we have the specifications extracted by Mr. Lawless from his Opinion denounced "as gross and palpable misrepresentations," as suggestions of falsehood and suppressions of truth, with other characteristics of a similar nature which I shall not repeat. He has exhibited here the same spirit, which first induced him to pronounce the article of Mr. Lawless false, calumnious, libellous and scandalous. Expressions are used in almost every page of his answer, which (in my humble opinion) policy as well as propriety ought to have forbidden.

The reason given by the respondent, why these three speci-

fications are not true is, that he did admit the evidence for the purpose of raising a presumption in favor of the power of the lieutenant governor to make the grant in question. Do either of those specifications deny that this was the case? By no means. What Mr. Lawless complained of was, not that the Judge refused to receive the evidence; but that after it was admitted, he considered it of no avail. That although these complete concessions were received in testimony, their effect was afterwards destroyed, on the ground that they must have been individual acts of a supreme dispensing power, and therefore afforded no proof of the existence of any general law. The specifications do not deny the admission in evidence of these complete concessions for the purpose of raising a presumption; but they assert that in fact they raised no such presumption in the mind of the Judge, and were not referred to by him as furnishing "the construction made by Gayoso himself of his own regulations." In the language of the Judge, in the 25th page of his letter to the House, he "thought it more rational to refer the confirmation to the sovereign power of the confirming officers, than to infer from that act a power in the inferior, not found in the charters from which all his powers seemed to be derived." What more than this has Mr. Lawless stated in the specifications now before us. This sentence of the Judge condenses the meaning of the whole three, and shows that he was neither misapprehended nor misrepresented by Mr. Lawless.

I come now to the 11th specification. I know that they are all a barren waste, and I shall travel over them as speedily as possible. It alleges the Judge to have decided, "that although the regulations of Morales were not promulgated as law in Upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed from the official station which he held, to have had notice of their terms."

It had been contended by Mr. Lawless, that these regulations were never promulgated as law in Upper Louisiana. As to this fact the testimony was contradictory. In which scale the preponderance was, it is not now necessary to decide. If it were, I think it could be shown that the weight of evidence was against their promulgation.

The Judge does not decide, either that there was a promulgation, or that there was not. He evades this question by deciding, that whether or not, such a publication was proved as must have brought them to the knowledge of the ancestor of the

petitioners, who was the surveyor of the province, and that was sufficient. If this be not his plain meaning, I do not understand the English language. (perhaps I do not.) I will quote the Judge's own words to those who understand it better.

"In answer to that portion of the argument, on behalf of the petitioners, which denies the force of law to the regulations of Morales, in Upper Louisiana, for their supposed want of promulgation, it is only necessary to remark, that such a publication is proved as must have brought them to the knowledge of the ancestor of the petitioners. The official station which he held does not permit us to believe, from the publication proved, that he could have been ignorant of the forfeiture to be incurred by a failure on his part to comply with the commands contained in these laws. It is, therefore, unnecessary to decide, whether, according to the principles of justice which prevail in our courts, this tribunal can regard a forfeiture as incurred, even under the Spanish government, and by a subject of that government, for disobedience to laws which had never been promulgated."

Is Mr. Lawless then incorrect in this specification? How does the Judge answer it? By a sweeping denunciation. "Here (says he) is another gross and palpable misrepresentation." Now I call upon all who can read and compare two papers with each other to say, whether Mr. Lawless has not attributed to the Judge, that which the Judge did decide.

The Judge in his answer wishes to divert our attention from the main proposition to the mere conditional assumption in the commencement of the specification, "that although the regulations of Morales were not promulgated as law," and to convert this into an absolute declaration that he had decided they were not so promulgated. But who does not perceive that the leading and principal feature of the decision, and that which the specification intended to embrace, was, that Soulard being a public officer must have known of the existence of these regulations, and was bound to obey them, even though there had been no public promulgation sufficient to make them binding upon others? I will not follow my colleague (Mr. McDuffie) in exposing the absurdity of this principle. If I had been writing such an article as that of Mr. Lawless, I should have applied to this decision the proper term, and pronounced it to be absurd. But whether it be so or not, is not now the question. We are considering not whether it is wrong, but whether it has been misrepresented by the specification. The 12th specification is

" that the regulations of Morales exclude all belief that any law existed under which a confirmation of the title in question could have been claimed."

Although this specification is in the very language used by the Judge himself, yet he pronounces it in his answer to be " another instance of the suggestion of a falsehood, arising from the suppression of truth." And what is the suppression of which he complains? It is that of the argument which brought him to this conclusion. It was the intention of Mr. Lawless in penning this article to make an abstract for public information of the principal points, which he thought had been wrongly decided in this very long Opinion. To have given the train of reasoning by which the Judge supported his different conclusions would have entirely defeated the object of the publication. He might as well have published the whole Opinion at once. And yet he is charged with the suggestion of falsehood by a suppression of the truth, because he gave the very point decided without adding the reasoning on which it rested. Those who were desirous of seeing that could refer to the Opinion itself, which had been previously published.

Now the point thus presented to the public, in the very words of the Judge, was the essence and spirit of his whole Opinion. It is the foundation upon which it all rests. It was introduced into the original decree long before the Opinion was published. Why does he now shrink from it? Is he conscious that he was wrong? And does he want to conceal his error under cover of an attack upon Mr. Lawless? He complains that the preamble to the regulations of Morales was not inserted in this specification. It would have been manifestly improper to publish this alone; because the Judge's decision, that " the regulations themselves exclude all belief that any law existed, under which a confirmation of the title in question could have been claimed," was his deduction from the whole regulations, preamble, articles, conclusion and all.

The Judge in his answer has grouped the 15th, 16th, and 17th specifications of the article together. They are contained in the following language:—

" 15. That the uniform practice of the sub-delegates or lieutenant governors of Upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as a proof of law, usage, or custom therein."

" 16. That the historical fact, that *nineteen-twentieths* of the

titles to lands in Upper Louisiana were not only incomplete, but not conformable to the regulations of O'Reilly, Gayoso, or Morales, at the date of the cession to the United States, affords no inference in favor of the general legality of those titles."

"17. That the fact, that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the government and population of Louisiana as property, saleable, transferable, and the subject of inheritance and distribution *ab intestato*, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession, or of the law of nations."

Now I will venture to assert, and I believe every lawyer who has examined this case will concur with me in opinion, that let the final decision of the case of Soulard be made when and where it will, it must eventually depend upon the nature and extent of the practice referred to in these three specifications. No court acquainted with its duty will at this late day venture to destroy the titles of a whole province founded upon a uniform practice which has existed since 1765. Although the lieutenant governors may have had no legal authority in the commencement to grant concessions for land; yet it is now too late to disturb that question. In such a case the maxim would apply in all its force, that "communis error facit jus." The peace and the property of society demand the application of this rule.

The Judge in his answer evidently approaches these specifications with an air of triumph. He alleges that no proof was given of the facts upon which they rest; and that no such assumptions are contained in his Opinion. What would have been his decision had these facts been proved, he says it is needless to inquire.

First, then, as to the 15th specification. The Judge or those who prepared his answer must have treacherous memories. Though he alleges that the facts contained in this assumption were not in proof, yet in the very page preceding he informs us that the evidence alluded to in this very fifteenth charge was objected to by the district attorney of the United States, but was received by the court. Nay, more; the Judge says he admitted it "on the very ground that it raised a presumption in favor of the power of the lieutenant governor to make the grant in question." In his letter to the House of Representatives he connected this 15th assumption with the 10th, 13th, and 14th; and in all his reasoning upon them on that occasion, he never thought of denying

the facts upon which either of them was founded. On the contrary, he makes it a point to declare, that he had admitted the evidence offered of the facts contained in the 15th assumption.

But even if he had not committed himself by his own solemn declarations, his denial would be of no avail. The proof contained in the record of Soulard's case is ample. The testimony of Col. Delassus—the last lieutenant governor of Upper Louisiana, establishes the practice beyond a doubt. The Livre Terrien—a book of record, contains a list of grants down to the year 1795, and they were all made by the lieutenant governors. Did the practice change after that date? Has there been or can there be shown a single concession of land in Upper Louisiana, made by any other authority than that of the lieutenant governor? But I proceed further, and will cite Judge Peck himself as my witness. When he decided the case of Soulard he had no doubt but that this practice had been clearly established. In his decree he says, "and it appearing that it was the practice of the lieutenant governors of Upper Louisiana to make concessions of land, in virtue of their office as such governors," &c. and afterwards in his Opinion he takes the practice for granted. And notwithstanding all this, we are informed by the Judge in his answer, that "the uniform practice alleged in the 15th charge was not in proof, and therefore that proof could not be disregarded." The Judge is also wrong in declaring that there is no such assumption as the fifteenth in his Opinion, "nor one word to countenance" it. On the contrary, taking this practice of the lieutenant governors for granted, he destroys its effect and puts it down; because of its supposed hostility to the regulations of O'Reilly, Gayoso and Morales. But I shall quote his own language. "The presumption (he says) which arises in favor of the validity of the acts of the supreme authority, especially such as the enactment of regulations and the acknowledgement of the authority of these for a series of years, is of a higher nature than that which arises in favor of the legality of a single act, *or even a series of acts, such as concessions of land by the lieutenant governor;* particularly when these acts are to be subject to the approval and confirmation of that supreme authority, which gave those laws that were to regulate the subject of concessions."

The Judge ought to have left this 15th proposition in the same company with which it entered the House of Representatives. He cannot escape by merely changing its position, and informing the Senate, that as the facts contained in it had not been

proved, it is needless to inquire what might have been the decision. Is there then any doubt of the existence of this uniform practice? And must not the cause of Soulard, in the end, be decided by its extent?

The facts contained in the 17th proposition are but corollaries from the 15th. If it be true, that all concessions of land in Upper Louisiana were made by the lieutenant governors, it follows, as a necessary consequence, that they must have been "treated and considered by the population and government of that province as property, saleable, transferable and the subject of inheritance and distribution ab intestato." The historical fact, stated in the 16th proposition, is extracted from Stoddard's History of Louisiana—a book which was before the Judge on the argument of the cause, and has been read to the Senate.

Mr. Lawless, in the 4th, 5th and 6th pages of his printed argument, placed these facts clearly and strongly before the Judge. They were main points. And if he has given no answer to these points, but has passed them over in silence; if he has disregarded them both in his decree and in his Opinion, is Mr. Lawless to be censured for stating in his specifications, that the Judge had assumed they furnished no inference in favor of the legality of such claims? If I were arguing a cause in Pennsylvania, depending upon an actual settlement, and I should contend, that it had been the uniform practice of that commonwealth to give a right of pre-emption to actual settlers, and the court should decide the cause against me without noticing this argument, should I not be justified in saying they had disregarded this practice as a proof of law, usage or custom?

But, says the Judge, if these facts were proved, how could I take them for granted? Were they not proved? I think the affirmative has been clearly shown from the testimony. But suppose they were not, for what purpose was the judge appointed? Who would think it necessary to prove as matter of fact to a judge what was the foundation of the titles to land in the country over which he was called to adjudicate? Was it not his duty to master this subject, before he took his seat upon the bench? The Act of Congress of 1824, under which he acted, called imperiously upon him to make himself acquainted with the land titles under the Spanish government. It is not possible he could have been ignorant concerning them, without shutting his eyes on all that was passing around him. This cause was argued in 1824, and again in 1825. He had before him both

Stoddard's History and the printed argument of Mr. Lawless. That argument referred him to a list of cases on the records of the court of St. Louis, in which these unconfirmed concessions had been treated as property. The facts alleged in the specifications were not denied by Mr. Bates, the district attorney. All the inhabitants of the country knew them to be true. Here then was a Judge residing in a country, all whose original Spanish titles were founded on concessions from lieutenant governors, who must have daily witnessed around him sales and bequests and descents of these titles—and must have known that they formed the subject of a great portion of the landed transactions of the country; and yet this Judge, who has never pretended to deny the existence of these facts, comes before the Senate and says, what would have been their legal effect had proof of them been offered, it is needless to inquire. What judge in Maryland would think of receiving proof that the original titles of the people in that state were derived from Lord Baltimore, or in Pennsylvania that they came from William Penn? It would be equally absurd for a judge in Upper Louisiana to require proof that their original Spanish titles sprang from the grants of their lieutenant governors.

But, says the gentleman, the courts in England have refused to regard even Camden as authority for a historical fact. Be it so. Is this a mere historical question—or is it not a question concerning what is the law of the country in which the judge resides? Who ever heard that any judge required this to be proved to him as a question of foreign law. It was his duty to be acquainted with the subject, and Stoddard's History contained no more than what he ought to have known, and what I have no doubt he did know without it.

If then there had been no express language in the Judge's Opinion upon which these specifications could have rested; yet as the propositions contained in them had been plainly presented to his view and strongly insisted upon in the argument, the very decree against the claim of Soulard, necessarily decided that they were to be disregarded. Without this assumption his decree would have been the reverse of what it was. Surely, when a party rests his cause upon a point, and the decision is against him, the judge must have assumed that this point ought to be disregarded.

The last assumption is, "that the laws of Congress heretofore passed in favor of incomplete titles, furnish no argument

or protecting principle in favor of those titles of a precisely similar character which remain unconfirmed."

The Judge declares in his answer that he made no such assumption. If he means that he made no such assumption in express words, it is true; but it is equally certain that in substance and in fact he has decided that the former Acts of Congress, under which many of these incomplete Spanish titles had been confirmed, afforded no protection to similar titles which remained unconfirmed. If this had not been his decision the title of Soulard would have been protected.

I think that on this point Mr. Lawless stands upon ground not to be shaken. The 2d section of the Act of 1824 prescribed, that the validity of the titles on which the Judge was authorized to decide should be determined "according to the law of nations; the stipulations of any treaty, and proceedings under the same; *the several Acts of Congress in relation thereto;* and the laws and ordinances of the government upon which it is alleged to have been derived." Now it is an established and admitted fact that incomplete concessions of a character similar to that of Soulard had been confirmed by the commissioners under previous Acts of Congress, over and over again. The Act of 1814, although it limits the power of the Board to a league square, yet recognizes these incomplete grants, and to that extent expressly authorizes their confirmation. From my present impressions, had I been the judge, I should have thought that as the Act of 1814 had positively sanctioned these titles to the extent of a league square, and as the Act of 1824 prescribed no limit in regard to the number of acres, the question was no longer open, and that if the concession were a fair one, I was bound to grant a confirmation of it as a matter of course. In my decree I might have referred to the Act of 1814, as the law under which such a claim was confirmed; and I thus answer the question asked by the Judge, to what law could he have referred as his authority in case his decree had been in favor of Soulard?

This point was strongly urged by Mr. Lawless. Its discussion occupies several pages of his printed argument. What answer does the Judge give to it in his Opinion? All that he says upon the subject is, "that the part of the Act which requires the court to determine 'the question of the validity of the title according to the several acts of Congress,' &c, has been adverted to, on behalf of the claimants, but not seriously relied upon as furnishing the ground of a claim to confirmation in the present

case. Upon this point it is only necessary to remark, that there is certainly no Act of Congress, which would authorize the confirmation of the present claim, or any part thereof."

Not seriously relied on! So far from this being the fact, it was relied upon as conclusive. The Act of 1824 did not like the former Acts limit confirmations to a league square; it was unlimited. No matter how many arpents the claim covered; if just, it might be confirmed. The principle had been settled by the Act of 1814 that these incomplete titles were valid, and yet the Judge makes a decision, which swept from his docket all such claims, at the very moment those claimants, confiding in principles settled by former Acts of Congress, were looking to his tribunal for a decision which would secure their rights. After all this, he now complains of Mr. Lawless for informing the public, that he had decided that these Acts of Congress afforded no protection to the claims.

I hold in my hand a list of other errors alleged to be contained in this Opinion, which might be enumerated, but I shall not occupy the time of the Senate in reading it. I contend that Mr. Lawless had a right to make the assertion contained in the specification; and that in this as well as in all the others he has stated the truth and nothing but the truth. He has been guilty of no misrepresentation. The miserable excuse of the Judge in regard to the four last, that his Opinion passed them over in silence—although his decision was against them, cannot avail him before this tribunal.

Upon the whole, then, the respondent had no just cause even to be offended with Mr. Lawless on account of his publication.

I now come to the vital and essential part of this cause; and I do contend that if there were no evidence before the Senate but the Opinion of the court, the article signed "A Citizen," and the fact of its author's imprisonment and suspension, these would be sufficient grounds to pronounce the respondent guilty. If he had the heart to proceed coolly and deliberately, without passion, and to cloak his malice under a fair and kind exterior, I should not believe him to be the better man, for being able so well to play the hypocrite. But the facts of this case leave nothing for conjecture. They speak in a language which cannot be misunderstood. It will now be my endeavor to present them before this Court, in a distinct and perspicuous manner, according to the order in which they occurred.

On Monday, the 17th of April, 1826, Judge Peck issued a

rule against Stephen W. Foreman, the editor and publisher of the "Missouri Advocate and St. Louis Inquirer," commanding him to appear on the next morning, and show cause why an attachment should not issue against him for a contempt of court. The language of this rule is unmistakable, and discloses the source of the whole proceeding. In it the Judge declares himself to be satisfied that the article signed "A Citizen," contained "*a false statement*" of a judicial decision delivered by him in the case of Soulard against the United States. He was not only satisfied in the first instance of the falsity of the statement, but that it tended "to bring odium on the court, and to impair the confidence of the public in the purity of its decisions."

In the circumstances in which the Judge was placed after he had determined to proceed, what ought to have been his course? He ought to have expressed no opinion, but merely called the editor before him on a general rule to show cause why he should not be attached for the publication. But before Mr. Foreman came before the court, or one word had been uttered in his defence, nay, before the issuing of the rule against him, the respondent had prejudged the cause. He had determined the publication to be "a false statement," "tending to bring odium upon the court, and to impair the confidence of the public in the purity of its decisions;" and this prejudication he grafted into the rule.

And here let me pause for a moment. No man who had a proper regard for his character would ever sit in judgment in any case even between strangers on which he had previously formed and expressed a decided opinion. He would never commit himself so much. Even if he were conscious that he could banish former impressions from his mind and be impartial, still his course would be viewed with suspicion, and there are always men enough in the world to attribute evil motives to the most upright actions. But here the respondent, notwithstanding he was both the accuser and the judge, decided at the very onset that the article was false, and calculated to make him odious before the public.

In the case of Almon, Lord Mansfield declined to sit in judgment on his own cause. Here, however, it may be said, that Judge Peck could not avoid it, as he was the sole judge of the court. Be it so. Then the necessity was still the greater, that he should have observed a prudent and impartial course, and heard everything before he pronounced any decision. But with-

out hearing anything, and before the rule was issued against the party accused, he had prejudged the merits of the whole case, and decided that the publication was a contempt of court. From such a beginning nothing was to be expected but passion and tyranny throughout the prosecution. After this, the whole trial was but a mere mockery, a cruel farce. The Judge had foredoomed Lawless as his victim. In the very first stage of the proceeding his article was decided to be a contempt.

At the return of the rule on Tuesday, the 18th April, Mr. Lawless appeared as counsel for Mr. Foreman. Did not the scene now exhibit a strange spectacle in a land of freedom? On the bench sat the Judge for the purpose of deciding his own cause brought before him upon his own accusation, and if we are to believe the argument of his counsel, he had unlimited power to fine and to imprison Mr. Lawless at his own pleasure—to inflict any punishment upon him short of mayhem or death. His will was the law. At the bar stood Mr. Lawless, a victim destined for the sacrifice. Although this proceeding was in form against the printer, yet Mr. Bates has sworn that he then believed and still believes, Judge Peck as an individual did not doubt from the beginning but that Mr. Lawless was the author of "A Citizen." The rule against the printer was merely a mode of reaching the author.

The manner of the two men presents a perfect contrast. The high and gallant bearing which Colonel Lawless had sustained upon the field of battle cowered before this judicial tyrant. (Why should I not call things by their proper names?) His manner we are told "was subdued," more than the witnesses had ever seen it. Instead of exhibiting the warmth and ardor of his native country, he became tame and spiritless. Whilst on the other hand, the calm cold manner of Judge Peck was changed into violence, passion and rage. We are indeed informed that he sometimes smiled, but it was only when Mr. Lawless, unable to conceal the author under the counsellor's robe, was betraying himself and rushing into the toils which had been prepared for him.

We are told that Mr. Lawless was heard before the Judge. But how was he heard? He began to demonstrate the truth of the article signed "A Citizen," but instead of being allowed to proceed in this, which was the vital part of his defence, he was interrupted at every step. According to Judge Wash, (the respondent's own witness) he used such language as this to Mr.

Lawless. "In this you are mistaken;"—"this has no authority;"—"this not only does not present the Opinion of the court but is against that Opinion, directly in the face of it;"—"it is not true;"—"it is false." These interruptions were not merely occasional, but continued throughout the entire process of the argument. The Judge not only attempted to argue each point with him, as he proceeded; but when he was on one point, would confuse him by rudely directing his attention to another. And when he had no other reply at hand, he would tell him this is not true, "it is false." What kind of a hearing was this? What a spectacle was here for the American people!

It has been said that nothing is more common than interruptions of counsel by the courts. They are common, perhaps too common. In this manner counsel are often put off the train of their argument. But is it common in any civilized country upon earth, whilst a counsel is decently endeavoring to advocate a cause before the court, for the Judge to interrupt him—and contradict him in the coarsest language, and wrong him at every step, as Judge Peck did on the present occasion? Mr. Lawless at length became confused and embarrassed, and after struggling along through part of two days, he could no longer sustain himself, but took his seat before his argument was concluded. "This I inferred, (says Mr. Geyer,) from the point at which he quit, and the manner he dropped the papers in his hand."

But there is another fact immediately connected with this part of the case, which proves conclusively how very improper the conduct of the Judge must have been:—and one such fact is worth a hundred arguments. His particular friend—the District Attorney, a gentleman whose character is well known to the members of this Court, observing the influence under which he was acting, and dreading the consequences, felt it to be his duty to violate that decorum which forbids a member of the bar to speak privately to a judge in relation to a question pending before him, and to advise him "to let the matter drop as easily as possible." This interference of Mr. Bates I have no doubt sprang from the best feelings and the purest motives. Still it shows how strongly he must have been impressed with the impropriety of the Judge's conduct, when he ventured to give him such advice. What was the Judge's answer? I will here read it from the testimony. "Pending the rule upon the printer, (says Mr. Bates) I was about to volunteer advice to the Judge, that in point of policy, it would be well to let the matter drop as easily as possible,

if it could be done. But he gave me promptly to understand, that his course was taken, and that it was matter of duty which could not be omitted." Yes! a matter of duty to rush on in his mad career against the faithful advice of his best friend.

There is another circumstance of a still stronger character, which the counsel for the respondent have not even noticed. Mr. Geyer appeared before this Judge in behalf of the printer, as a volunteer. The respectability of his character is well known to every member of this court. At that time a contest existed in Missouri whether the Constitution of the State ought not to be changed, so as to limit the judicial office to a term for years, instead of during good behavior. The celebrated letter of Mr. Jefferson to Kercheval had produced a strong disposition among the people to render the judiciary dependent, and reduce the period of judicial service. Mr. Geyer was a friend to the judiciary—a known advocate of the permanence of the judicial office. After he entered the house of Mr. Penrose, where the court was then sitting, that gentleman taunted him with the disposition to punish, manifested by Judge Peck, and urged it as an argument in favor of changing the constitution. Mr. Geyer, anxious to prevent a course of proceeding, which he feared would be seized upon to excite further prejudice against the judiciary, and raise the clamor still higher, appeared before Judge Peck as the advocate of the printer. He had never been asked to do so by any person; but as an honest and patriotic citizen, for the sake of his country and to sustain the truth and soundness of the opinions which he had espoused, he voluntarily interfered and did his utmost to arrest the Judge in his infatuated course. What, sir, must have been his conduct to create this state of feeling in Mr. Geyer? Here was a man of as high a character as any in Missouri—cool and dispassionate—who interposed merely to prevent the respondent from doing an act, which by its violence and tyranny might be a deadly blow against the independence of the judiciary. After all this, we have been told that it is necessary this Judge should escape in order to protect the character and standing of the judiciary. Escape from what? From the consequences of an act which before it was committed Mr. Geyer solemnly believed would sully the character of the whole judicial body to which he belonged. Actuated by these laudable motives, he made an argument which would have convinced any mind not wholly pre-occupied by prejudice. He used much policy. He made no attack upon the Judge's vanity. He did

not touch the article of Mr. Lawless, because he well knew that the Judge regarded the Opinion, which it alleged to be erroneous, as the apple of his eye. He would not have been heard patiently in any remarks to prove the truth of that article, or even that a single error existed in the Opinion. He steered clear of all the Judge's prejudices. Admitting the misrepresentation and libellous character of the article, he contended it could not be punished as a contempt of court. What points did he urge in support of this proposition? 1st. That no cause was pending; and that the published opinion of a judge after a case had been finally decided, was a fair subject of criticism, and that the article was therefore only punishable as a libel. 2d. That such a power violated the constitutional guarantees of the freedom of the press and the trial by jury. Mr. Geyer presented the subject much in the same manner as I have attempted to present it before this court. Of his ability to do so with great force there cannot be the least doubt. He read the Constitution of the United States and the Bill of Rights of Missouri. He did not go to England for authority, but relied on the constitution of his country to protect the rights of the American people. To use his own language he "endeavored to impress the Judge with the danger of exercising a power by implication—not strictly necessary—which seemed to be so directly against the letter of the constitution."

But the Judge did not take a moment for reflection after the argument was concluded. He overruled it immediately, without assigning any reasons. So impatient was he, that he delayed the delivery of any opinion, until he could get the author of the article before him. The court then adjourned.

On the next day, Thursday, 20th April, 1826, Mr. Foreman, the printer, appeared, gave up the name of Mr. Lawless as the author of the article, and purged himself of the contempt. The manner of this purgation has a strong bearing on the subject before us. We are indebted for it to the testimony of Mr. Bates. Mr. Foreman declared on oath, "that he as editor had examined the manuscript as he commonly did the communications made to his paper, to ascertain that it was decorous in its terms and manner, that finding it unexceptionable in that respect, and having a responsible author, he published it, without knowing or inquiring into the truth or falsity of the statements it contained. And that in doing so, he had no intention to commit a contempt, or treat the court with disrespect." Here then was

the editor of a paper, well acquainted with the land claimants and capable of judging the effect which the publication might have upon the society around him, who came into court and swore that he believed the article to be decorous and unexceptionable in its terms and manner, and that in publishing it he had no intention to treat the court with disrespect. If the Judge had not been fixed as fate in his cruel purpose, all these circumstances combining would have induced him to pause and reflect. The advice of Mr. Bates, the powerful and conclusive argument of Mr. Geyer, the oath of Mr. Foreman, and the repeated declarations of Mr. Lawless himself, whilst arguing for the printer, of the absence of any intention, on the part of the author of the article, to misrepresent the opinion of the court, were all brought to bear upon his mind; but their only effect seemed to be the more violently to excite his passions and heighten his indignation.

A rule is made upon Mr. Lawless to appear *forthwith*. That which was bad enough in the first rule now becomes much worse. "The false statement" in it is now magnified into "false and *malicious* statements." The tendency of the article is not now merely stated as in the first rule, but the author himself is charged with an "intent by its publication," to impair the public confidence in the upright intentions of the said court, and to bring odium upon the court, and especially with intent to impress the public mind, and particularly many litigants in this court, that they are not to expect justice in the causes now pending therein, and with intent further to awaken hostile and angry feelings on the part of the said litigants against the said court, in contempt of the said court." The conclusion of this rule is a still greater outrage. It calls upon Mr. Lawless "*forthwith*" to "show cause why he should not be suspended from practising in this court, as an attorney and counsellor therein, for the said contempt and evil intent." Without one moment's delay he is called upon to answer, why he shall not be deprived of the exercise of that profession on which he and his family depended for existence. It is not merely why he should not be fined and imprisoned for a contempt, but this mild, placid, dovelike judge, as he has been represented, dictates also a rule against Mr. Lawless, to show cause forthwith why in effect his wife and children should not be made beggars.

What! Is there any precedent of a proceeding like this? Had the judge but taken time to refer to 2 Petersdorff's Abridgement, the book which he has cited here, he would have found that

a rule upon an attorney to show cause why he shall not be stricken from the roll is a very different matter from an attachment. But his vengeance could not tarry. He was eager to inflict the double punishment of consigning Mr. Lawless to disgrace by sending him to the common prison, and depriving him of the power of practising his profession, so long as this land court should endure; and yet we have been talking about the quo animo of this transaction, and whether the whole might not have proceeded from a pure and disinterested, if not from a benevolent, motive. A picture has been presented to us of a man filled with the very milk of human kindness, with a heart pure, tender, and guileless as a child of three years old, and whose whole conduct has been so correct as to win for him the warm friendship of the counsel, who last addressed you in behalf of the respondent. Of Mr. Lawless I will here take occasion to say what I believe to be strictly just; I profess no friendship for him, for my friendships are not quite so sudden; but from what I have seen of him (which has not been very much), he has exhibited the model of an Irish gentleman. That he has failings, I have no doubt; I believe he has; but they proceed from the ardor and intensity of his feelings—feelings which belong to the brave and gallant nation from which he springs. He may be hasty and impetuous, but a braver or a warmer heart beats not in a human bosom. I admire and I respect him, and am so much his friend that I wish to see him have justice, and so far as God shall give me ability, every effort of my mind shall be directed to the attainment of that object.

On the 26th May, 1824, the Act passed, enabling the District Court of the United States for the State of Missouri to try the validity of these Spanish land claims. It required all claims to be presented to the Court within two years. Any claim thus presented and not decided within three years after the passage of the act, "on account of the neglect or delay of the claimant," was forever barred. The claims were to be filed before the 26th May, 1826, and to be decided before the 26th May, 1827. To suspend Mr. Lawless for eighteen months from 21st April, 1826, was to banish him forever from that court, if the law had not been afterwards extended.

Some evidence has been given, but for what purpose I cannot conceive, unless to mortify the feelings of Mr. Lawless, that he had but little business in the court, except that arising from the land claims. Be it so. He had devoted the whole energy

of his mind to the investigation of the Spanish laws and customs, and of the treaties relating to these land titles. He naturally became concerned for most of the claimants, and interested in their claims. They were that on which he rested his hopes of fortune. Under these circumstances this Judge called upon him to show cause forthwith why he should not be deprived of the opportunity of prosecuting any of these claims, and thus in fact lose nearly all his practice. Most truly may he be said to have been foredoomed. But we are told that the Judge did grant him a delay until the afternoon. This is most true. He actually extended the rule for half a day, to enable him to attend to some urgent business in another court.

After all these indications of the Judge's feelings, what could we expect from the trial itself? Could it have been anything but what it was, an outrage on the Constitution and laws of the country? It was then high time for Mr. Lawless to take his stand. He then resolved upon his course, and to that resolution he stood firm and steadfast. As an American citizen, I rejoice at the determination which he exhibited. After his argument in behalf of the printer had been overruled with contumely, after he had been publicly insulted, and his character traduced, he acted as a man ought to have acted. Hitherto I have yielded, but henceforward I move not a step. I put it to each member of this court, whether it was not such a determination as he himself would have made? Mr. Lawless felt as he ought to have felt. He then gave instructions to his counsel to make no apology. The time for apology was over. When arguing the question for the printer before the Judge, who then well knew that the article was written by Mr. Lawless, he repeatedly declared that the author had no intention to offend the court. These declarations were all made in vain; and the Judge had exhibited such a spirit that when he was called upon to answer in his own person, he felt it to be his duty to stand upon his rights as a man and as a citizen.

The trial commenced on Thursday afternoon. And how? Mr. Magenis took up the article and attempted to prove, that it contained no misrepresentation of the Opinion. The Judge immediately cried out, Stop, sir, that question has been already fully argued and decided on the rule against the printer. I shall hear nothing further upon that point. But had it been fully argued? No. Mr. Lawless had indeed attempted to argue it, but he had been interrupted and insulted at every step, until he became

embarrassed and sat down in despair before his argument was completed. And how had the question been decided? It is true the argument had been immediately overruled, but no opinion was given. Besides, this was on the rule against Mr. Foreman. Was not the rule against Foreman distinct from the rule against Lawless? Was it the same cause? Foreman had purged himself of the contempt, and been discharged. Mr. Lawless was now the accused. Here was a new rule against a new man—the old one having been dismissed. Upon this new charge Mr. Lawless had a constitutional right to be heard by counsel. Yet this Judge determined that his Opinion should remain a mystery,—that it should not be analyzed and exposed to vulgar gaze. He stopped Mr. Magenis, and would not allow him to utter one word for his friend upon that point, which was all important for his defence against the prosecution. Has any case ever occurred in the United States where upon the trial of a criminal offence such a high-handed course was attempted?

But why should the Judge have considered one question as open, and the other not so? The counsel were not prohibited from arguing the question of jurisdiction. They were allowed to show that the proceedings of the court were unlawful and violated the constitution, though these topics had been discussed on the former rule both by Mr. Lawless and Mr. Geyer. These were still held to be open points. But when the Opinion—the sacred Opinion was approached, the Judge cries out, Forbear! You must not touch this monumentum ære perennius. You may argue as long as you think proper to show that I am trampling upon the constitution and violating the dearest rights of an American citizen. That point is still open. But the Opinion:—do not venture to discuss it. That door is forever closed.

Mr. Magenis and Mr. Geyer now argued the same questions, which the latter had argued on the rule against the printer. Mr. Geyer came better prepared to press his points than he had been before, and Judge Wash tells us his argument was methodical, logical and well digested. Colonel Strother then rose and began to violate his instructions by making an apology for the article. He was stopped and privately requested to take his seat. One of the counsel (Mr. Meredith) asked Mr. Geyer "what ground of argument was Colonel Strother taking, when you interrupted him?" The answer was, "He was taking none, as I thought. I considered him as making rather an apology than an argument. It was on that account that he was interrupted." I shall never

forget the air and the manner with which Mr. Geyer declared in the conclusion of his testimony that he thought it not a case for apology.

Whether there was now a short recess of the court is uncertain. On this point the evidence is contradictory.

A spectacle was afterwards presented such as I trust will never again be witnessed in any part of these United States. The Judge took off his goggles, and bound up his eyes. God knows I do not attribute this weakness of his eyesight to him as a fault. I am sorry for his misfortune. But such was the fact. He sat upon the bench blindfold. Mr. Bates the district attorney was then called upon to read the article of Mr. Lawless, paragraph by paragraph, and on each as it was read the Judge commented. And such comments! And that too from a court of justice! Such was the impression made on the bystanders, that one of the witnesses tells us, that among the multitude which thronged the court, he did not hear a single man say the Judge was doing right. Mr. Lawless, meanwhile, sat silent and submissive. He uttered not a word. He only showed by the flush upon his countenance the indignant feelings which were struggling in his heart. He remained until he could endure it no longer. But before he left the court house, he consulted with his counsel, whether his withdrawal could be construed into a contempt. What was the answer? Either that he was not obliged to remain there, and hear himself abused, or listen to such a torrent of abuse. It is stated in both ways by the witnesses.

As the Judge proceeded he became more violent. Judge Wash, his leading witness, admits that he "spoke in strong terms of the publication." He used the words "false" and "malicious." He frequently used expressions of this kind, "That is wholly unfounded." "This is clearly false and without foundation except in the malice of the author." And he says that remarks like these occurred throughout the whole course of the analysis of the publication. They were not merely occasional bursts of passion, but it was a steady current of malicious and abusive language. The epithets used were very various. The words "false," "scandalous," "libellous," "unfounded," "slanderous," "calumniator," were all used over and over again in the course of this harangue, which lasted for about two hours. We may form some faint idea of what must have been its tenor and spirit, from the expression used by the Judge in his answer to the article of impeachment. The terms embodied in that

document have left a lasting monument to posterity of the temper and feeling under which this American judge must have acted.

The Rev. Mr. Horrall, a gentleman who was merely passing by accident and had never been in the court before, and whose high character places him above all suspicion, says, that the Judge appeared to be under vehement excitement. He used the words "slanderer," "falsehood," and "misrepresentation," and the witness thought he intended to apply these epithets to the author of the publication. But why need I enumerate all the witnesses, who have given testimony of a similar character? As if to cap the climax of abuse, the Judge declared that such a calumniator as the author of the article, had he lived in China, would have had his house blackened, as an emblem of the blackness of his heart. Even Judge Peck himself could go no further. A large majority of the witnesses state the expression in this or a similar manner. Two or three of them, however, say that the terms used were not directly and personally applied to Mr. Lawless, but they were used by the Judge as an illustration of his argument. In every material part of their testimony, however, there is no disagreement. Whether the one or the other version be the truth, there can be no doubt but that it was the Judge's intention the audience should point to Mr. Lawless, as the black-hearted calumniator whom he had described. Now I ask one and all of the members of this Court, whether, in the course of their experience, they have ever known a man convicted even of murder and brought before the court for his final sentence, to receive any thing like such a cruel and inhuman taunt, as that the very house in which he lived ought to be painted black, as an emblem of the blackness of his heart.

I may be wrong in another particular. I have inquired of many learned men whether they had ever heard or read of such a custom in China as that to which the Judge has adverted; and the answer of them all has been in the negative. I may be displaying my own ignorance, but I have certainly never met with any thing of the kind. The gentlemen on the other side have referred us to no book asserting the existence of such a custom. Still I might not be warranted in applying to Judge Peck the language which he used to Mr. Lawless, and pronouncing this Chinese custom to be without any foundation, except in his own malice.

When the dearest rights of an American citizen are at stake,

I will not stoop to answer such observations as have been made by one of the gentlemen on this part of the case. What, sir, when this court is solemnly engaged in investigating an outrage committed against the liberties of this country, shall we suffer our attention to be led away to a farcical scene in a play of Kotzebue? Do gentlemen believe they can laugh out of court a fact, which every man who has a heart must feel to have been the extremest aggravation of insult and cruelty? Sir, under such circumstances, wit is out of place; and if, feeling strongly and as I think justly, I did often repeat the same question to the different witnesses, I did not expect to be treated with a sneer.

[Mr. Wirt.—The remark to which the gentleman seems to allude, was, I can assure him, perfectly sportive in its character, and that nothing like a sneer on the gentleman was thought of or intended.]

If so, I retract the remarks to which it gave rise.

It is scarcely necessary to waste a word upon the question whether Judge Peck was in a passion, whilst he was delivering this opinion against Mr. Lawless. All the circumstances of the case prove that he must have been. The mass of the testimony establishes the fact that he was vehement and excited to a degree beyond what the witnesses had ever seen him. Both Mr. Geyer and Judge Wash declare that they had never observed the Judge's manner to be so impassioned as on this occasion. Whether he was in a passion or not, is wholly immaterial; but were it otherwise, the fact has been clearly established. His passion is some little extenuation of his guilt. Had he done what he did coolly and deliberately, the evidence of his malignity would have presented a still darker hue.

I have now come to the last scene, an attachment issued against Mr. Lawless. He was brought into court in custody of the marshal. The Judge then, with a good deal of formality (to use the language of Judge Wash) asked him if he wished to have interrogatories exhibited, and whether he would answer them if they were exhibited? To which he replied that he did not require any interrogatories to be propounded, and if they were he would not answer them.

Now, sir, after the Judge had occupied about two hours in proving that the article of Mr. Lawless was false, scandalous and malicious—that it had no foundation except in his own malice—and that its character was so infamous that even in China the man who could write it would have his house painted black to

denote the blackness of his heart, and to warn the public against him; after he had thus held Mr. Lawless up before the assembled multitude, he asks him whether he will not answer interrogatories, and purge himself upon oath of the contempt. Sir, had he consented to answer them under such circumstances, the certificate of his naturalization which he had exhibited with a decent pride before this court ought to be destroyed, and the man who could have so disgraced it ought to be driven back to the country from which he came, there to crouch and fawn before a lordly aristocracy. But no, sir, the spirit of his "father-land" beat high in his bosom:—a spirit which the oppression of centuries has not been able to subdue. I trust and believe that rather than submit to such wantonness of tyranny, he would have yielded up his life as a sacrifice. Yet a gentleman whose name I believe is Carr, has told us that he thought, at the time Mr. Lawless refused to answer the interrogatories, there was something contemptuous in his manner, and the witness has illustrated by exhibiting to the Senate the posture in which Mr. Lawless stood. He was asked whether Mr. Lawless had used any disrespectful language, and the reply was that his language was perfectly respectful, but there was a something in his manner which did not accord with that respect, which from the pre-conceived notions of the witness he thought due to judicial dignity.

I put it to the heart of every member of this most dignified Court to say, whether under such aggravations he would have answered interrogatories? Did not the constitution protect Mr. Lawless? Was it not his right to refuse to be sworn in a prosecution against himself? Yet we have been told that for his refusal to answer he was imprisoned twenty-four hours, and that until he had refused, it was the Judge's intention to inflict no other punishment but that of a suspension from practice. Here then we have presented to our view an attempt made by an American Judge to compel an American citizen to be a witness against himself; and for no other crime but because he stood upon his constitutional rights, and determined that he would not be sworn, we see him doomed to imprisonment long enough to brand him with disgrace so far as this could be inflicted by such a sentence.

When Mr. Lawless was called upon to answer interrogatories, we are informed he was a good deal agitated. After his refusal, he read a paper to the Court which he desired might be

entered upon the record. That paper is in the following language:

In the District Court for the District of Missouri, sitting at St. Louis, on the 21st day of April, 1826, for the decision of land titles.

THE UNITED STATES

vs.

L. E. LAWLESS.

Be it remembered, that on the day and year aforesaid, the said court called upon the said defendant to know whether if there were interrogatories filed in this cause he would answer them, which the said defendant declined for the following reasons, which he assigned to said court in the words following: First, I refuse to answer the above interrogatories, because this court has no jurisdiction of the offence charged upon me, in manner and form as the court has proceeded against me. Second, because the positions ascribed in the article signed, "A Citizen" are true and fairly inferred, and extracted from the opinion of this court in the case of Soulard's widow and heirs *vs.* the United States, as published.

To this request, (I use the language of Judge Wash) the Judge answered that it could not be put on the record, and that if it were it would answer no purpose, or something of that kind. On which Mr. Lawless remarked, it was of no great consequence, and then threw the paper down and seated himself. Mr. Magenis then took up the paper, and asked the Judge whether, if it should be signed by the bystanders, he would permit it to go on the record? The Judge appeared to me to hesitate, and seemed for some time at a loss, and then replied it would answer no purpose, and could not go on the record in that shape either. Whether this paper was called a Bill of Exceptions, or what name was given to it, the witness could not say.

I have been thus particular in stating this transaction from the lips of the principal witness of the respondent, because it has been much relied upon both by him and by his counsel. But with what justice, let Judge Wash himself determine. The following question was propounded to him by the court: "When Col. Lawless read the paper which has been called a Bill of Exceptions, was it pronounced by the Judge, or supposed by you, to be intended as a new contempt?" To which he answered "I never regarded it in that light, nor was anything said by the court, that I remember, which induced me to believe that the court so regarded it."

Let me make a few observations in explanation of this part of the case. We have seen that under the law of Missouri a writ of error is allowed in cases of contempt, and the judges of the Court of Error may suspend the execution of the sentence

by a supersedeas. Mr. Lawless, therefore, in the hurry and confusion of the moment, must have thought that he might derive some benefit before a superior court from having this paper placed upon the record. It never occurred to any of the witnesses at the time, that the reading of it was a contempt, and we have the oath of Mr. Lawless that he had no such intention.

Another singular practice prevails under the laws of Missouri, which they have borrowed from Kentucky. When a Judge refuses to sign a Bill of Exceptions, the party may appeal to the by-standers for their signatures. Mr. Magenis must have had this in his view, when he asked the court if they would permit the paper to go upon the record, if it were signed by the by-standers. Upon this proposition the Judge doubted. He at first hesitated, and seemed to be at a loss how to decide. But at all events, both the testimony of Judge Wash and Mr. Magenis prove conclusively, that no insult to the Judge was either given or intended by this proceeding.

The Judge without further delay pronounced the fatal sentence against Mr. Lawless of imprisonment for 24 hours, and a forfeiture of his means of livelihood for eighteen months.

Was not this a "cruel and unusual punishment?" Does it not violate an express provision of the Constitution? Why should he not have been satisfied with the infliction of a fine? Why not punish Mr. Lawless through his pocket? It is not pretended that he had before ever shown any want of respect for that court. This was the first instance. Even if the Judge had possessed the power, a fine of 50 or 100 dollars would have answered every purpose of punishment, and would have been sufficient to warn others against offending in like manner. This in every point of view would have been infinitely better. But no! Mr. Lawless must be disgraced. He must be sent to gaol. He must never again appear in that court as the advocate of any of the land claims, to acquire a thorough knowledge of which he had devoted several of the best years of his life. I ask one and all of you to consider seriously the nature and extent of this punishment, and the provocation. Can it have proceeded from a pure motive and a virtuous intention? Was it merely to vindicate the character of the court? The honor of the judiciary?

But the vindictive feelings which urged the Judge to inflict this punishment had not cooled even twenty-two months after. Mr. Lawless then went from his home at St. Louis to attend the

session of the District Court at Jefferson city, a distance of 140 miles. He was there comparatively a stranger. When he modestly presented himself for admission, the Judge immediately asked in open court, whether the period of his suspension had expired. Is there a man within the sound of my voice, who can for one moment suppose, that the Judge asked the question for the sake of information? Can that be possible? The punishment of Mr. Lawless was an era in his life; it was engraved upon his memory, and will remain there forever. Yet several months after this suspension had expired when Mr. Lawless, in a strange place, and before a multitude of people to whom he was unknown, asked for admission, he is treated with indignity. Judge Peck deemed it necessary and becoming his judicial character, to inform the multitude that he had affixed a stigma upon this man.

There is another circumstance to which I must advert before I conclude. A witness by the name of Walker has been examined. His testimony never would have been admitted by the Court, save on the principle that it might tend to show the feelings of Mr. Lawless, and thus prove that he was a prejudiced witness. Having been received upon this ground, it was afterwards used by the counsel for a totally different purpose. After Mr. Lawless had been goaded by oppression into madness, and was actuated by those feelings which naturally belong to an injured and suffering man, the intemperate language which oppression provoked and extorted from him has been gravely urged as an argument to justify his oppression. The effect has been relied upon to justify the cause.

Mr. Walker met Mr. Lawless in his garden in the Spring after his suspension and imprisonment. Every object around was calculated to remind him of the punishment he had endured and was still enduring. Whilst showing Mr. Walker his improvements, he spoke of the hardship of his suspension. He observed that it had done him much injury and interfered essentially with his business. But for it, he said, his improvements would have been in a more advanced state. In the very bitterness of his soul, however, he was unwilling to take any unmanly advantage of Judge Peck. He exclaimed, that if the Judge, after his eye-sight should be restored, would meet him on the field of honor (of false honor, I admit), "he would let him off from going to Washington." This language, wrung from him in his own garden, is brought here by Mr. Walker, who was

subpœnaed to prove it; and this is the manner in which the Respondent has been defended. Sir! no act of the life of Mr. Lawless subsequent to the punishment inflicted upon him can be proper evidence in this cause; but I am astonished, considering the well-known ardor of his temperament, that they have not been able to prove more declarations of a similar character. I have not a doubt but that he has a thousand times expressed the most indignant feeling at his persecution.

I have now nearly done with this case; and in conclusion I shall strongly express what I strongly feel. I do most solemnly believe if this Judge shall escape punishment, the description which has often been contemptuously applied to the power of impeachment, that it is but the scare-crow of the constitution, will hereafter be strictly just. But the acquittal of this man may have a still worse effect. If the power of impeachment presents no prospect to the people of removing an arbitrary and tyrannical judge, what will be the consequence? They will soon begin to inquire whether the judicial office ought not to be limited to a term for years. At the commencement of this trial, I should have shrunk with horror from such a proposition. But if there be no other alternative;—if the people must either be cursed during a long life with an arbitrary and oppressive Judge who has trampled upon their rights, or the constitution must be so amended as to limit the term of office of the inferior judges, I should choose the last alternative, as the least of two very great evils. I say the *inferior* judges. God forbid that ever such a provision should extend to the Judges of the Supreme Court of the United States.

Impressed with a solemn belief of the Respondent's guilt, I now respectfully ask his conviction. I have no regrets to express, no apologies to offer for the part which I have taken upon this trial. I have been acting in an office wholly unsought by myself and ungrateful to my feelings; but yet I enjoy the proud consciousness of reflecting, that I have done my duty. I have urged the Respondent's conviction with no feeling of personal animosity; but in the strong belief, that mercy to him will be cruelty to the American people. I ask for his conviction in the name of the judiciary, whose pure character he has sullied, and whose independence he has endangered. I ask for it in the name of the people of the United States, whose constitution and laws he has violated by tyranny and oppression. Should he be

acquitted. I shall bow with the most profound respect to the judgment of this Court; but I shall never cease to believe, that it will establish a precedent dangerous in the extreme to the rights and liberties of the American people.

REMARKS, FEBRUARY 2, 1831,

ON THE BILL FOR THE RELIEF OF JAMES MONROE.[1]

Mr. Buchanan remarked upon the short time that was left, before the close of the session, to attend to the public business. He hoped the claim would be decided on to-day. Mr. B. said that, before he resumed his seat, he would take this occasion to remark, that, after the present generation had been gathered to their fathers, and when the men of other times came to review the proceedings of this day, it would be a stain upon the character of the nation, if we should suffer the illustrious individual who preferred this claim to go to his grave without its adjustment. Such conduct towards an individual, now in poverty and old age, who had rendered most important services, both in peace and in war, to his country, would be blazoned to the world by the enemies of our free institutions, as another proof of the ingratitude of republics.

REMARKS, FEBRUARY 7, 1831,

ON A MOTION TO PRINT 3,000 ADDITIONAL COPIES OF THE MAJORITY AND MINORITY REPORTS ON THE QUESTION OF REPEALING SECTION 25 OF THE JUDICIARY ACT.[2]

Mr. Buchanan said it might be supposed that he felt some interest in the success of this motion, but really he felt none. The question on the repeal of the 25th section had been settled by the House—settled to Mr. B.'s entire satisfaction. This decision had gone forth to the people, and he saw no good purpose it could answer to send the two arguments of the committee lagging after it through the country. He was therefore opposed to printing any additional copies.

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 570.
[2] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 620.

REMARKS, FEBRUARY 8, 1831,

ON A MOTION TO STRIKE FROM THE GENERAL APPROPRIATION BILL THE APPROPRIATION FOR THE SALARY OF THE MINISTER TO RUSSIA.[1]

Mr. Buchanan, of Pennsylvania, said he did not rise to pronounce a eulogium either on the Secretary of State, or the minister to Russia. This task had already been sufficiently performed by their friends. Neither did he rise to assail the motives, or to attack the character, of any gentleman upon that floor. Such a course had never been, and he trusted would never be, pursued by him. He rose, very briefly to state his own reasons for voting against the amendment under consideration.

Judging from the discussion of the question on all sides of the House, one might be led to suppose that some of the best settled principles of constitutional law had been abandoned, and that, after an experience of more than forty years, we are still left in doubt and uncertainty as to the powers which the constitution confers on the Executive branch of this Government. On this subject, that instrument is so plain, that he who runs may read. It confers upon the President of the United States, by and with the advice and consent of the Senate, the exclusive power of making treaties with foreign nations, and appointing public ministers to negotiate these treaties. Both the minister and the treaty are called into existence, without the agency, either directly or indirectly, of this House. The people of the United States have entrusted, and, in my opinion, wisely entrusted, our foreign relations to the President and Senate. To the people, and not to this House, are they directly responsible for the proper execution of this high trust.

It is true that, in many cases, the House of Representatives are called upon to make appropriations for carrying treaties into effect; and, in all cases, we vote the outfits and salaries of our foreign ministers; yet, it is equally certain that we are under a high, moral, and constitutional obligation to make the grants of money necessary for these purposes. I do not say that extreme cases may not exist, in which it would be our duty to refuse such appropriations. The safety of the people is the supreme law; and if their rights and liberties were endangered by any treaty,

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 654–656.

or any mission, it might then become the duty of this House even to disregard their constitutional obligations, for the purpose of preserving the republic from danger. Should such a case ever occur, it will make a precedent for itself. I think no gentleman will contend that it exists on the present occasion.

It is not my purpose either to applaud or to censure the appointment of Mr. Randolph as minister to Russia. He was regularly appointed to this station by the President and the Senate. To them, and to them alone, it belonged to judge of his character and qualifications. And here, after what has been said in this debate, it is but justice to state that the nomination of Mr. Randolph was the spontaneous act of the President himself, and sprung solely from the suggestion of his own mind. This nomination, thus made, received the approbation of the Senate. It appears from their secret journal, which has since been published, that, in that body, there was not even a division upon the question. I have a right to infer that the President's selection was unanimously approved by the Senate, because it does not appear that there was one dissenting voice. Whether this be the fact or not, I cannot tell, because I have never had any communication with any Senator upon the subject.

Under these circumstances, shall we withhold the money necessary to pay the salary of the minister thus appointed? Shall we arrest this mission to Russia, which has been long established with great advantage to the country, because we do not approve the conduct of the present minister? He is responsible for his conduct to the President, and the President himself is responsible to the American people. From that responsibility it is not in his nature to shrink. The constitution has not conferred upon the House of Representatives any power to arrest a mission, merely because they may be dissatisfied with the appointment or conduct of the minister.

I admit that, in the present agitated state of Europe, it would be highly proper that we should have a minister actually residing at St. Petersburg, and I regret exceedingly that Mr. Randolph's health did not enable him to remain in that city. But who could have predicted, at the time he left this country, that such a necessity would have existed? Europe was then tranquil: she was reposing in peace. There was no precursor of the approaching storm, unless it was the stillness which portends the earthquake. The madness and folly of a single despot have aroused the people of that continent to vindicate their rights: and I trust in God

they may never lay down their arms until the liberties of each of its nations shall be secured by constitutional charters.

When Mr. Randolph sailed, the President could not have foreseen any of these events. Our relations with Russia had always been of the most stable character. The absence of our minister from that court, during the inclemency of the winter months, could not have operated to our prejudice, in the then existing state of things. Under such impressions, was it improper for the President to give to Mr. Randolph a contingent permission to leave "temporarily his post, for the advantage of a more genial climate," in case he should discover that his health was not sufficiently vigorous to endure the severity of a Russian winter? And yet this circumstance has been seized upon for the purpose of making a most bitter and violent attack upon the present administration.

But, said Mr. B., the original motion has been changed with the approbation of the mover; and now, instead of merely depriving Mr. Randolph of his salary, it contains a general provision depriving all the foreign ministers of the United States of their salaries for any portion of time they shall be absent from the country to which they may be sent, no matter for what cause. The provision is general in its terms; it makes no exceptions; what, then, is its nature? The salaries of our public ministers to England, France, and Russia, are notoriously inadequate for their support. Indeed, it has now come to this, that no man having a family, unless he is wealthy, can afford to accept any one of these three missions, without danger of being ruined in his circumstances. In opposition to every principle of our Government, no poor man who is prudent would accept either of these stations.

A minister thus sent abroad, is equally liable to sickness with all other men. We know not what a day or an hour may bring forth. He may leave this country in the most vigorous health, and, after his arrival at the place of his destination, he may be prostrated in a moment by sickness, or his health may be impaired in the public service by severe and close attention to the duties of his mission. Under such circumstances, it may become absolutely necessary, for the restoration of his health, that he should for a short time leave the country. Should this amendment prevail, it will deprive a minister of his salary during the time that he absents himself, merely for the purpose of recruiting his health, even though his constitution may have been shat-

tered by his laborious and anxious endeavors to serve his country. The means of subsistence will thus be withdrawn from him, at the very time when necessity will compel him to incur the greatest expense. Is it possible that this House will ever sanction so unjust a principle? Such a principle has never even been suggested in the past history of our country. Shall we now adopt so unjust a provision, and apply it to all ministers, under all circumstances, merely because at the present time we may be dissatisfied with Mr. Randolph's absence from the Russian court? I cannot believe that this proposition will receive the sanction of any considerable portion of this House.

TO GEORGE PLITT.[1]

WASHINGTON 18 February 1831.

DEAR SIR/

I received your kind letter of the 7th Instant & the Chester County Democrat of the 8th by the same Mail; & I confess the information which they contained was wholly unexpected. I can say nothing upon the subject to which they refer, unless it be to express a profound & grateful sense of the kindness & partiality of those of my friends in Chester County who would elevate me to a station to which I have never aspired. I cannot flatter myself for a single moment, that the people of the State will respond to a nomination which I feel has been dictated in a great degree by personal friendship; & I shall retire to private life, after the close of the present session without casting one lingering look behind. As a private citizen I shall always remember with the deepest sensibility the many favors which I have received from the people of the District whom I have so long represented, perfectly convinced that they have already bestowed upon me quite as many honors as I have ever deserved.

I sent you by yesterday's mail a copy of the correspondence between the President and Vice President. Its publication has not produced the sensation here which was expected. I think it will not injure General Jackson in the estimation of his friends

[1] Buchanan Papers, Historical Society of Pennsylvania. Also, Curtis's Buchanan, I. 122. The person to whom this letter was addressed was then a citizen of Philadelphia. He was for many years a warm personal friend of Mr. Buchanan.

in Pennsylvania. Its effect however will be still more to divide the personal friends of Mr. Crawford & Mr. Calhoun.

The speech which I made upon Peck's trial will probably not appear until a full report of the case shall be published. The commendations which have been bestowed upon it, both here & elsewhere, have been of a character so far beyond its merits, that I fear the public will be disappointed upon its appearance in print.

I would suggest to you the propriety of considering this letter confidential so far as it regards myself. The subject is of a nature so delicate, & anything I can say upon it is so liable to misconstruction, that I should not have answered your letters, had I not felt that you have always deserved my friendship & that I might rely with confidence on your discretion.

from your friend

JAMES BUCHANAN.

GEORGE PLITT ESQ.

P. S. What is now the state of Anti-Masonry in your County?

REMARKS, FEBRUARY 22, 1831,

ON THE BILL FOR THE RELIEF OF CERTAIN INSOLVENT DEBTORS OF THE UNITED STATES.[1]

Mr. Buchanan said, that when the House some days since, upon his motion, had kindly consented to take this bill up out of its order, he had then declared he should occupy but a very short time in its discussion. He said he would now redeem that pledge; and as time had become still more precious, and the close of the session was so near at hand, he would content himself with a very brief exposition of the nature of the bill. Should any gentleman, however, desire a further explanation upon any point, he would hold himself ready to give it.

This bill, said Mr. B., contains but a single principle. It merely enables the Secretary of the Treasury to compromise with such debtors of the United States as were insolvent on the first day of January last, and confers upon him the same power of releasing those debtors which every individual possesses. All such debtors of the United States are embraced within the pro-

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII. 778–780.

visions of this bill; except the principals in official bonds, and those who have actually received public money, and not paid it over, or accounted for it according to law.

At present, the Executive Government of the United States possesses no power, in any case, no matter what may be the circumstances, to compromise with its debtors, and accept a part of the demand instead of the whole. The man who has become insolvent, should he be a debtor of the United States in a sum which he is unable to pay, is, under existing laws, placed in a state of helpless and hopeless despair. His individual creditors, convinced of his honesty, may be willing to release him; his friends may be willing to furnish him the means of recommencing business; but this is all in vain, whilst the debt due the United States hangs like a millstone around his neck. From this there is no escape. Justice, relentless justice, untempered by mercy, is now our only rule of conduct towards our insolvent debtors.

Even if our policy were purely selfish, and we acted from no higher motives than a regard for dollars and cents, we ought to pass this bill. From the examinations which I have made, and the information I have collected upon this subject, I entertain no doubt but that this bill, should it become a law, will bring at least one million of dollars into your treasury, not one cent of which can ever find its way there unless some measure of this nature shall be adopted. There are now in this country many, very many, honest and enterprising merchants, who, although they have become insolvent, retain the highest character among their friends, and in the society of which they are members. In a great number of instances their insolvency cannot be attributed even to negligence or want of skill, but has been wholly the effect of causes which they could neither foresee nor control. Some instances of this character have come to my knowledge, which would be well calculated to enlist the feelings of this House in favor of the bill. There is now an insolvent merchant in the city of Philadelphia, whom this bill would relieve, who has paid into the Treasury of the United States between three and four millions of dollars in duties. His insolvency was, in a great degree, I think I might say solely, occasioned by the passage of a bill through the Senate, in 1826, to reduce the duties on tea. The reputation of this gentleman, both as a man and as a merchant, stands as high as it ever did in his most prosperous days; and should the power be conferred on the Secretary of the Treasury to compromise with him for the debt which he owes

the Government, his friends will immediately furnish him the means of recommencing business. He will have no difficulty in compromising with his individual creditors. This is but one instance out of many of a similar character, which have come to my knowledge.

Suffer me to advert to another case by way of illustration. A merchant in the city of New York has become insolvent. He is indebted to the Government in a very large sum of money, one dollar of which he is not able to pay. The father of this merchant, anxious to obtain a release for his son, and enable him again to go into business, has actually offered to transfer to the United States property estimated to be worth between four and five hundred thousand dollars, provided his son shall be discharged from the debt. This offer could not be accepted by the President for want of power; and thus the United States, should this bill be negatived, will lose, in a single case, nearly half a million of dollars.

There are many similar cases in which the friends and the relatives of insolvent debtors will come forward and enable them to pay the Government a part of its debt, in consideration of obtaining a release for the whole. Mr. B. said he expressed his own opinion merely when he stated that the passage of the bill would bring at least a million of dollars into the treasury: there were others, with better means of judging than himself, who believed the sum would greatly exceed that amount.

But, sir, said Mr. B., much higher motives than those of a pecuniary character enter into the consideration of this question. There are many honest and enterprising men in this country, having families dependent upon their exertions, who will be left utterly without hope, should this measure be defeated. All their creditors, except ourselves, are willing to compromise with them. Shall we then continue to be inexorable?—shall we alone have no mercy, even although mercy be our best policy?—shall we, merely for the sake of oppressing our debtors, deprive ourselves of more than a million of dollars?

By the passage of this bill you will restore many of our best citizens to usefulness. Men who have long been prostrated in the dust by the weight of debts which has been continually pressing upon them, will again spring into fresh and vigorous action the moment this pressure is removed. Hundreds and thousands are now looking anxiously towards you for relief, and regard the adoption of this measure as their only remaining hope on this

side of the grave. Why will you not afford these men relief? Why will you not suffer them by their enterprise and industry to add to the wealth and prosperity of the country, when you can grant them this boon, not only without injury, but with positive benefit to your treasury? But I must be brief, and will pursue this branch of the subject no further.

This bill is entirely retrospective in its nature, and can have no effect upon future cases of insolvency. Its relief will, in almost every case, be confined to men who are now notoriously insolvent. There is, therefore, much less danger of fraud upon the Government, than if it applied to future cases. But this consideration has not prevented the Judiciary committee from guarding the bill with the utmost care, and rendering it impossible, so far as they could, that a fraudulent debtor should take advantage of its provisions. In the performance of this task, they have been much assisted by the suggestions of the Secretary of the Treasury, and, Mr. B. said, he would venture to assert, there was greater danger that the bill instead of being too lax was too rigorous in its provisions. He said he would not, at present, remark upon any of its details.

REMARKS, FEBRUARY 28, 1831.

ON THE INDIAN QUESTION.[1]

Mr. Buchanan obtained the floor, and said, that at the last session of Congress he had prepared himself to discuss what has been called the Indian question. He was then called home before he had any opportunity of presenting his views upon this subject. He had again prepared himself to discuss this question at the present session, and was now ready to proceed with his argument. He believed that the act of the last session was dictated not only by the purest principles of policy and humanity, but that it presented the only means of preserving and perpetuating the unfortunate and interesting children of the forest, who had so many claims upon our protection. He had the vanity to think he could present some new views upon this subject. But the hour was now late, and there were several important bills

[1] Register of Debates, 21 Cong. 2 Sess. 1830–1831, VII 827.

upon the table, which, unless they could pass the House, and go to the Senate this night, would be lost. He would therefore forbear; and for the first time, as he believed, since he had been a member of this House, he would move the previous question.

The previous question was sustained, and the bill was ordered to a third reading.

TO MARTIN VAN BUREN.[1]

LANCASTER 28 March 1831.

DEAR SIR,

Mr. Benjamin Evens informs me there is now a vacancy in the consulate at Tangier and that he is anxious to obtain that appointment. You may perhaps recollect that he sometime ago applied to be appointed Consul at Leghorn and that then, although you did not think proper to recommend the removal of the present incumbent, you expressed a desire to gratify the wishes of Mr. E. when a proper occasion should occur. I need scarcely add that it will afford me much pleasure should such an occasion be now presented.

When General Porter accepted the office of Marshal of the Eastern District of Pennsylvania, he was under the impression it was worth $2500 per annum. This impression was received from a statement of Major Lewis. He soon discovered that it was not worth more than the half of that sum and was about to resign when the idea occurred to some of his friends that he might obtain the appointment of Commissioner under the Insolvent Debtors Act from Mr. Ingham. I had some conversation with General Jackson upon the subject, who told me to apply for the appointment in behalf of Mr. Porter and he would himself send a recommendation to Mr. Ingham. I have no doubt he did so: still Mr. Porter is not appointed.

I should be sorry if this circumstance would prevent Mr. Porter from becoming a citizen of Philadelphia and I entertain no doubt that Mr. Ingham and his friends will in the same proportion rejoice. Mr. Porter is a man of energy and of business and is in my judgment correct in his political principles. He will

[1] Van Buren MSS., Library of Congress.

exercise a decided influence over his fellow-citizens wherever he may reside. His practice here is very good and he has talents to command practice any where. The only reason why he would accept any situation in Philadelphia is on account of the education of his children. Why might he not be appointed Director of the Mint in the place of Dr. Moore. That gentleman was hostile to the election and is I understand still hostile to the administration of Gen: Jackson. It is true he is the personal and political friend of Mr. Ingham; and that may be a good reason for his continuance in office.

I merely make this suggestion, because I think such a man as General Porter would be useful at this time to the cause of the Country if he resided in Philadelphia.

Yours very respectfully

JAMES BUCHANAN.

HON. MARTIN VAN BUREN.

FROM GEO. W. BUCHANAN.[1]

PITTSBURGH April 29. 1831.

DEAR BROTHER,

I have been absent from home in attendance upon a sale of U. S. property at Union Town for a week past. I succeeded in effecting a very good disposition of the property. The Government, I have no doubt, will approve my proceedings.

I find that in every county in which I have been, your nomination for the V. Py. is very popular. In Fayette & Washington, there will scarcely be a division of sentiment. Still, however, it is thought proper to suspend all public proceedings in your favour till the time of holding their regular Democratic meetings in the summer. That course will also be adopted in this County. Every leading *Jackson politician here*, with the exception of one or two Ingham men, is favourable to your nomination. It will however be probably better to wait for a further expression of public opinion at *the regular meetings of the party throughout the state*.—I observe that in the "Kentucky Gazette" your name is placed on the Democratic Ticket under Gen: Jackson's.

It is believed here that the appointment of Atty General has been tendered to you. If so I hope that you will accept it. It is a most honourable station and free from that abuse which attaches to the Secretary-ships. Will Van Buren be a candidate for the Vice-Presidency?

[1] Buchanan Papers, Historical Society of Pennsylvania. Also, Curtis's Buchanan, I. 125.

My arm is not yet so far restored as to be of any use. I trust however that the weakness is only of a temporary nature. My health in other respects is good.

I am your grateful Brother

Geo. W. Buchanan.

FROM MAJOR EATON.[1]

(Private.) Washington 31. May 1831.

Dr. Sir

Where are you, & what doing, I cannot tell, having heard nothing from you since the adjournment of Congress. That you are doing well I have no doubt, & earnestly hope.

I introduce myself to you, now, at the request, & by the direction of the President. The mission to St. Petersburg is expected shortly to become vacant. It will afford the President pleasure to confide this trust to you, if it shall suit yr. convenience to accept it. He desires me to make known his wishes to you, & to solicit an answer. It is at the present an important Court, and a highly interesting part of the world.

For reasons not material now to be explained, the President desires that you will consider this communication entirely of a confidential character.

With great respect

J. H. Eaton.

TO MAJOR EATON.[2]

Lancaster 4 June 1831.

Dear Sir/

I received your letter last evening, offering me "by the direction of the President," the mission to St. Petersburg. I feel with the deepest sensibility this pledge of the kindness of the President—& the recollection of it shall ever be engraven on my grateful memory. My attachment for him, both personal & political, has been of the warmest character, & he has now engrafted upon that feeling a strong sense of individual gratitude.

There is but a single circumstance which induces me to doubt whether I ought to accept the mission. I wish to be placed in no public station in which I cannot discharge my duty with use-

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 130.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 130, where it is imperfectly printed.

fulness to the Country & honor to the administration of General Jackson. Ignorant as I now am of the French language, I doubt whether I could acquire a sufficient knowledge of it in proper time, to enable me to hold that free communion with the political circles in St. Petersburg which I consider essential to the able discharge of the duties of a foreign minister.

I have much business now on hand which I could not immediately leave without doing serious injury to individuals who have confided in me. Will you be so kind as to inform me at what time the President would think the public interest required me to leave the Country in case I should accept the mission?

Please to remember me to the President in the strongest terms. Accept my thanks for your uniform kindness & present my respects to Mrs. Eaton.

I remain sincerely your friend

JAMES BUCHANAN.

HON: JOHN H. EATON.

FROM MAJOR EATON.[1]

(Private.) WASHINGTON CITY June 7. 1831.

DEAR SIR

I have just recvd. yr. letter, & will show it to the President, whom I shall see during to day. The difficulty you suggest, can no doubt be remedied.

Mr. R. is not expected to return before July or August; it would then be too late in the season to reach St. Petersburg by water transportation. To depart in September would create the necessity of travelling over land from Hamburg or Havre. This, I am confident, the President would not ask of you. I feel satisfied that he will grant the indulgence asked, and defer your departure until next spring. But I will see him, & if I be wrong in this, I will again write you tomorrow;—if no letter come, you may understand by the silence, that my suggestions are approved by the President.* Very truly yours J. H. EATON.

P. S.* I will write to you tomorrow or the next day, *at any rate.*

3. O clock. I sent yr. letter to the President. In answer he thus writes "Say to Mr. Buchanan, he will not be required to go out before next winter or spring, that he may reach St. Petersburg on the breaking up of the ice—unless something more than is now expected arises when the President will rely upon Mr. B.'s patriotism to proceed—he will have sufficient time to arrange his affairs."

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 131.

TO MAJOR EATON.[1]

LANCASTER 12 June 1831.

DEAR SIR,

After the receipt of your last kind letter of the 7th Inst. with the extract from the President's note to you annexed granting me all the indulgence I could have desired I can no longer hesitate to accept the Russian Mission.

I fear that the necessary arrangements both of a professional & private character which I must soon begin to make preparatory to leaving the Country—together with the study of the French language which I intend to commence—may disclose the fact that this mission has been offered to me and accepted. Indeed from the publications in the Newspapers it was believed by many, before I had any intimation that such an intention existed on the part of the President. Is there any reason why I should for the present defer these preparations?

Please to present my grateful compliments to the President & believe me to be sincerely your friend

JAMES BUCHANAN.

HON: JOHN H. EATON.

FROM MAJOR EATON.[2]

[WASHINGTON, June 15, 1831.]

DEAR SIR

On receiving your letter this morning I referred it to the President, & he has returned me a hasty note which I enclose to you. It is quite like himself, candid & frank.

With great regard yrs.

J. H. EATON.
15 June 31.

DR. SIR

I send you a letter to-day recvd. from Mr. Buchanan. What shall I say to him.

Yrs. J. H. EATON.
15 June 31.

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[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 131.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 132.

Dr. Sir,

Say to him in reply, to go on & make his preparations, & let the newspapers make any comments that they may think proper, & mind them not. It is only necessary that *he* should not give them any information on this subject—the journals will say what they please, and be it so.

Yours,

A. J.

FROM ROGER B. TANEY.[1]

(Confidential.) Washington Augt. 2. 1831.

My Dear Sir

I received your letter and immediately waited on Mr. Livingston,[2] & placed it in his hands—requesting him to ascertain whether your appointment and acceptance might not at once be made public. Mr. Livingston informed me today that he had seen the President, and that the only reason for desiring that nothing should be said about it was that Mr. Randolph had not yet returned—& that he did not wish that your appointment should be formally made and publicly announced, until Mr. Randolph arrived in this country. The Secretary of State will however write to you himself today. I omitted to ask him when Mr. R. was expected—but he will probably mention the time in his letter to you. I can readily imagine that the present state of things may be rather embarrassing to you—and hope it will not be long before an appointment which I am quite sure will give great satisfaction to our friends, can be officially made known.

Mr. Livingston intends to go to New York in the course of this week in order to have a conference with Mr. McLane & Mr. Van Buren before the latter sails for England. He will leave Washington on Thursday unless he should learn in the mean time that Mr. McLane is on his way to this place. And as an interview with him on your affair would I presume, be agreeable to you perhaps you may make it convenient to meet him in New York.—

Governor Cass has accepted the appointment of Secretary of War—& was to leave home on the first of this month & expected to be here before the 15th.—

Wishing you my Dear Sir a pleasant excursion & regretting that my engagements here will prevent me from joining you at Saratoga—

I am most truly

Your friend & obt. st.

R. B. Taney.

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[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 133.

[2] Secretary of State.

FROM EDWARD LIVINGSTON.[1]

(Private.) WASHINGTON August 2d 1831.

MY DEAR SIR

Mr. Taney having given me your letter of the 26 July, with a request that I would communicate it to the President, I did so, and he has directed me to say that it was not deemed proper to make the offer of the Russian Mission public, until Mr. Randolph's return should make the place vacant and that when that event happened he would direct me to write to you.

The former communications were made to you while I was confined to my bed and did not pass through my department or they would have been put in a shape that would have spared you any embarrassment on the subject.

I am my Dear Sir with greatest regard & esteem

Your Friend & Hbl. Ser.

EDW. LIVINGSTON.

TO GENERAL JACKSON.[2]

LANCASTER 10 September 1831.

DEAR GENERAL,

Having had the bilious fever severely for the last three Autumns—I was advised by my Physicians to go to the North this summer—as the best means of preventing its recurrence. Accordingly I have been wandering about among the New Yorkers & the Yankees for several weeks past. I reached home but last night.

Whilst I was at Boston the anti-masonic letter of Mr. Adams made its appearance. This folly although it caps the climax is in perfect character with the history of his conduct. It is a melancholy spectacle to see a man who has held the first office acting as he has done. It is now seriously believed even by his former friends that he is courting the A. M. nomination. He & Rush are a par nobile fratrum.

I was happy to find every where that the little specks which appeared on the political horizon about the time you changed your Cabinet have been entirely dissipated. It could not have been otherwise. In the opinion of all your friends the present Cabinet is just such an one as it ought to be. In this State your strength has alarmed those who evidently wished to aban-

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 132.

[2] Buchanan Papers, Historical Society of Pennsylvania.

don you & they are now the loudest in your support. It not being in their power to affect you they are pushing another purpose with all their might. They are stremously opposed to a National Convention to nominate a Vice President—and through the inadvertence of our friends who are without suspicion it appears to be settled that the State convention which will meet to nominate a Governor on the 4th March next will also select a candidate for the Vice Presidency. This nomination ought to be made by a Jackson convention on the 8th January. The consequence will be that the State administration —on account of its extensive patronage & the interest felt by all the State office holders in sending their particular friends to the convention—will probably be able to control the nomination. George M. Dallas is unquestionably the candidate of the State administration & of all those who are the friends of Mr. Ingham & Calhoun. Now I have no wish to be a candidate for the Vice Presidency, on the contrary my nomination was got up without my consent & it is my intention to decline but I desire to do it[1] at such a time & in such a manner as will be entirely agreeable to yourself. I think that no man ought to hold that office but one of mature age who has obtained the confidence of the American people by distinguished public services. It ought to be the crowning glory—the last honor conferred upon any man—unless he should afterwards be elevated to the Presidency. In short he ought to be next in the confidence of the people to the President himself. I have not the vanity for one moment to suppose myself to be such a character. I wish therefore to pursue that course whatever it may be which will be best calculated to promote the election of a man sincerely friendly to yourself & to your administration who would aid you in the Senate in promoting those great measures of your administration on which your own glory & the welfare of the Country so much depend. It is my intention to pay you a visit, the latter end of the present month or the beginning of the next & I should be glad to know when you would be most at leisure.

I am much pleased with the appointment of General Porter. It is a good & popular appointment.

I understand the name of John K. Kane is before you as a

[1] The letter down to this point is printed in Curtis's Buchanan, I 134, 135, where it is said "The residue of the original letter is lost" The rest of the letter has, however, been found, and is here given.

candidate for commissioner under the French Treaty. He is a respectable & intelligent man & his appointment would gratify the Leiper family who have ever been your steady & influential friends. I believe Mr. Kane's standing at the Phil. Bar is equal to that of any other gentleman of his age.

TO DANIEL WEBSTER.[1]

LANCASTER, September 13, 1831.

DEAR SIR: I enclose you the copy of a letter which I have addressed to the Secretary of the Treasury, because I have taken the liberty of using your name in it. If you consider the reference incorrect, it will afford me pleasure to correct it immediately. In looking over your remarks on the bill for the relief of insolvent debtors, I was forcibly struck with the liberal and kind expressions which you used in relation to my exertions in the House. Rest assured that they are duly appreciated by me, and that I consider it "praise, indeed, to be praised by you."

Should your recollection correspond with mine in relation to this bill, if you thought proper to interpose, a word from you would have a powerful effect in correcting the error into which the Attorney-General and Secretary of the Treasury have fallen.

Please to present my respectful compliments to Mrs. Webster, and believe me to be truly yours.

JAMES BUCHANAN.

HON. DANIEL WEBSTER.

FROM DANIEL WEBSTER.[2]

BOSTON, Septr. 24, 1831.

DEAR SIR.

The decision at the Treasury on our (or more properly on *your*) Act of the last session astonishes me. I had never dreamed of any such thing. If you think the enclosed expression of opinion will do any good, you are at liberty to communicate it.

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[1] Curtis's Life of Webster, I. 405.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Life of Webster, I. 406.

I thank you for your kind & friendly expressions; & as I did you no more than justice, in regard to your agency in ye passing of the Insolvents' Relief Bill, I trust I shall on no occasion do you less. I would express the hope of seeing you at Washington, in the winter, if it were not that such an expression might imply an expectation that you are not to be elsewhere, at that time.

Not knowing at all how that may be, I must confine myself to the tender of general good wishes & to the assurances of esteem and regard.

DANL. WEBSTER.

HON. JAS. BUCHANAN.

FROM DANIEL WEBSTER.[1]

BOSTON Septr. 24th 1831.

MY DEAR SIR/

I have the honor to acknowledge the receipt of your letter of the 18th[2] Inst., enclosing the copy of one from yourself to the Secretary of the Treasury, relative to the construction of the Act of the last Session for the relief of certain Insolvents. Your communication furnished me with the first information of the construction, proposed to be put upon that Act, at the Departments. I confess I am quite surprised by it. No such construction ever occurred to me as being possible, nor was ever suggested, to my knowledge by any one. The language of the Act appears to me to be, as it was intended to be, general, & unambiguous. I must acknowledge I can see no ground, upon which its application can be limited in the manner proposed, which I am quite sure would be, as you say, utterly at war with the intentions of every one of those who concurred in the law. With the most unfeigned respect for the opinions of the Attorney General I cannot persuade myself that he has taken the right view of the provisions of the Act If he has done so, we are very clumsy law-makers.

I am, Dear Sir, with regard,

Your obt. servt DANL. WEBSTER

HON: MR. BUCHANAN.

TO MR. McLANE.

WASHINGTON 3 October 1831.

DEAR SIR

As I had used the name of Mr. Webster in my communication to you relative to the construction of the Act of the last

[1] Buchanan Papers, Historical Society of Pennsylvania: inaccurately given in Curtis's Life of Webster, I 405

[2] The letter referred to is that of Mr. Buchanan to Mr Webster, dated September 13, 1831.

[3] Buchanan Papers, Historical Society of Pennsylvania. Mr. McLane was then Secretary of the Treasury.

Session for the relief of Insolvent Debtors, I believed it to be my duty to send him a copy of that communication. Since my arrival in this City I have received his answer, which has been forwarded to me from the Post Office at Lancaster & now have the honor of enclosing it to you.

from your friend

JAMES BUCHANAN.

HON: LOUIS MCLANE.

FROM BUCHANAN'S MOTHER.[1]

October 21 [1831].

MY DEAR SON:—

With Harriet's permission, I write you a few lines in her letter. I feel deep solicitude respecting your mission to Russia, and perhaps I am too late in laying [before you] my objections, which, in my estimation, are formidable. Would it not be practicable, even now, to decline its acceptance? Your political career has been of that description which ought to gratify your ambition; and as to pecuniary matters, they are no object to you. If you can, consistently with the character of a gentleman and a man of honor, decline, how great a gratification it would be to me. May God of His infinite goodness, dispose of us in whatever way may promote His glory and secure our everlasting felicity, is the prayer of your affectionate

MOTHER.

P. S.—At what time do you intend paying us that visit, previous to your departure from the country which gave you birth, and I expect, to me, the last visit? Do not disappoint me, but certainly come.

1832.

FROM EDWARD LIVINGSTON.[2]

(Private and unofficial.) WASHINGTON Jany 12. 1832.

MY DEAR SIR

I pray you to receive my congratulations on your appointment and the unanimity with which your nomination is understood to have been confirmed by the Senate—a favor which it is believed will not be conferred upon all of

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[1] Curtis's Buchanan, I. 134.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 135.

us. Allow me also to ask at what time you can arrange your affairs for a departure. Have you designated any one to serve as your Secretary of Legation? You know that your wishes will be consulted on the occasion. Should you not desire that Mr. Clay should be retained in that situation—I could mention a gentleman who would be highly useful to you, he speaks most of the modern languages, has travelled in Europe and made good use of his travels. He is now employed in my department and I should part with him with very great regret, but being sincerely attached to him I consider his advancement, not my interest or convenience in this application: for he, Dr. Greenhow, enjoys my fullest confidence and you will if you take him find him every way worthy of yours, and well calculated by his manners, deportment and usage of the world, to aid you in the lighter but very necessary duties of your Station as well as to perform those of a more important kind with which you may entrust him.

Two or three apples of Discord have as you will perceive by the papers been thrown, in both houses, each of them sufficient to create a warfare that will last during a session.

I am my Dear Sir with high regard

Your Mo. Obdt. EDW. LIVINGSTON.

DIARY, MARCH 21, 1832.[1]

March 21, 1832.

I left Lancaster in the stage early in the morning for Washington and arrived in Baltimore the same evening. Although my feelings are not very easily excited, yet my impressions on this day were solemn and sad. I was leaving a city where I had spent the best years of my life, where I had been uniformly a popular favorite, and, above all, where I had many good and true friends who had never abandoned me, under the most trying circumstances. Among these people I had acquired a competence for a man of moderate wishes, and I think I may say without vanity my professional and personal character stood very high. I was about to embark in a new pursuit, and one in which my heart never was; to leave the most free and happy country on earth for a despotism more severe than any [other] which exists in Europe. These gloomy reflections often came athwart my mind. They were succeeded, however, by a sense of reliance on that good Providence which hitherto had blessed and sustained me, and by a conviction that I was about to go upon an important mission in which I might be made the instrument in His hands of rendering important services to my country.

[1] Curtis's Buchanan, I. 136.

DIARY, APRIL 8, 1832.[1]

Sunday, April 8th.

I set sail from New York for Liverpool on board the "Silas Richards," Captain Henry Holdridge, accompanied by Lieutenant John W. Barry,[2] of the U. S. army, as private secretary, and Edward Landrick, a mulatto servant. I suffered from seasickness during nearly the whole voyage. Our fellow-passengers were kind and agreeable. Dr. Hosack of New York gave Charles Archibald, Esq., the son of the Attorney-General of Nova Scotia, a letter of introduction to me, which he delivered on shipboard. I found him to be an amiable and intelligent young gentleman, and enjoyed much pleasure in his society. There was a Mr. Walter—an Englishman—from London, on board, a man of general information, who was always ready and always willing to defend all the institutions of his own country, whether good or bad. He would have been a very agreeable companion, had he been willing to converse instead of making speeches. Notwithstanding, he was warm-hearted and kind, and the impression he made upon me was quite favorable. In addition to these passengers, we had a Mr. Clapham from Leeds, Mr. Stuart from Pittsburg, Mr. and Mrs. McGee and Mr. Moller of New York, Mr. McBride of Dublin, Mr. Morris of Brockville, U. C., and his sister-in-law, Mrs. Morris, from ——— in the same province, Mr. Osmond, a preacher of the Society of Friends, from Indiana, going to London to attend the yearly meeting, Mrs. and Miss Taylor of New York.

The captain was an excellent seaman, a gentleman in his manners, and possessed much more information than could have been expected from one in his profession who had crossed the Atlantic eighty-eight times. We saw Cape Clear, the southwestern point of Ireland on Sunday, the 22d; but were detained by head winds for several days on that coast. Several of us had determined to go on board a fishing boat and land at Cork, and proceed from thence to Dublin, but were prevented by adverse winds from approaching the shore. We arrived in Liverpool on Thursday, the 3d May, about 12 o'clock (noon), after a passage of 25 days. When the pilot came on board, he informed

[1] Curtis's Buchanan, I. 136.

[2] A son of the Hon. William T. Barry, commonly called Major Barry, Jackson's Postmaster General.

us that Liverpool was clear of cholera, but that it was raging both in Cork and Dublin. We took lodgings at the Adelphi Hotel. The passengers on this day gave Captain Holdridge a dinner at "The Star and Garter," at which I presided. Mr. Brown and Mr. Ogden, our consul, were present as guests.

DIARY, MAY 4, 1832.[1]

Friday, May 4th.

Mr. Brown[2] of Liverpool took me about in his carriage and showed me the town of Liverpool. The appearance of the people, their manners and their language are so similar to those of New York that I could scarcely realize I was in England. The bricks of which the houses are built when new have a dirty yellow appearance and the coal dust soon gives them a darker hue. This imparts a gloomy appearance to the town and deprives it of that light and cheerful hue which we experience in Philadelphia and New York. It is a place of great wealth and vast commerce, although the approach to it is tedious and difficult and altogether impracticable at low tide. The Mersey is but a small river compared with those in America. Its docks are admirable and very extensive, covering a space actually under water of between eighty and ninety English acres. The cemetery is well worthy of observation. Mr. Barry and myself dined with Mr. Brown at his country house about three miles from Liverpool. It is beautifully situated, the grounds around it highly improved, and both its external and internal appearance prove the wealth and the taste of its opulent and hospitable owner. Francis B. Ogden, Esq., the American consul, and several other gentlemen were of the party. We spent a very pleasant afternoon and evening.

Mr. Ogden has wandered much over the world. He is an agreeable and warm-hearted fellow and something, I should suppose, of what we call "a gimcrack" in America. He has given me a cipher of his own invention which he says is the best in the world—and that it may be continually changed, so that

[1] Curtis's Buchanan, I. 137.

[2] Mr., afterwards Sir William, Brown, was a member of the firm of Brown Brothers, bankers, of Liverpool, a house having extensive American connections.

my secretary may decipher one letter and yet know nothing about any other. During our stay at Liverpool we received many attentions. We were particularly indebted to Mr. Crary and Mr. Carnes, for whom I had letters of introduction from my friend John S. Crary of New York. I could not help observing at this place what a strong impression the successful operations of our Government had produced on the minds of Englishmen. Our national character now stands high, notwithstanding the efforts which have been made to traduce it.

DIARY, MAY 5, 1832.[1]

Saturday, 5th.

Left Liverpool on the railroad, and arrived at Manchester—a distance of thirty miles—in one hour and twenty-five minutes. There are two tunnels, one of about 2200 yards, under the city, to communicate with the vessels at the docks, the other about 200 yards, passing under a hill in the suburbs.

TO THE REV. EDWARD BUCHANAN.[2]

London 12 May 1832.

My dear Brother,

We left Liverpool on Saturday morning last & arrived in this City on Tuesday. On our way, after passing over the rail road to Manchester, we visited Birmingham, Kenilworth Castle, Warwick Castle, Stratford upon Avon, Blenheim & Oxford. Every portion of the Country that we have seen is in the highest state of cultivation & its appearance at this season of the year is delightful. One thing however which must strike every American traveller is the mercenary spirit of all that class of people with whom he comes in contact on the road. No person performs any office for you no matter how slight without expecting to be paid. Indeed travelling & living here are very extravagant, & not the slightest part of the trouble & expense are the

[1] Curtis's Buchanan, I. 138.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 138.

perquisites which it is expected you will give to servants of all kinds, post boys, coachmen, &c. &c.

I have visited the cathedral of Oxford & Westminster Abbey: two of the finest specimens of Gothic architecture in England. I have not time to give you a description of either. They are gloomy, venerable piles & give birth to many solemn associations. They recall past ages to your view & raise the mighty dead of former generations to be your companions. As places of worship however they must be very damp & uncomfortable. In Ireland the people have ceased to pay tythes. They submit to have their articles seized, but the proctors can find no purchasers for such articles at any price. The consequence has been that nearly all payments have ceased.

This Country is at present in a very distracted state. Never since the days of Charles the first has there been such an excitement among the mass of the people. What will be the event God only knows. The King [William IV.], who this day week, was one of the most popular monarchs who ever sat upon any throne, is now detested or rather despised by the people. His refusal to create the number of Peers necessary to carry the reform Bill, & his alleged hypocrisy throughout the whole proceeding have occasioned this change in public sentiment. I should not be astonished at a revolution; but yet I hope & trust that the people may obtain their just rights without resorting to such a dreadful alternative.

The Church is not popular. Its rich livings are conferred upon the younger branches of noble houses more with a view of making a provision for their temporal wants, than of providing for the spiritual welfare of the people committed to their charge. The best course is pursued in our own Country, where men choose the ministry from conscientious motives & the people provide for them voluntarily. The present system of tythes cannot continue much longer in this Country without some modification, unless there should be a much stronger Government than exists at present. Indeed from every thing I have seen, although this is a country of vast wealth & resources, & of very advanced civilization I thank my God that I was born an American rather than an Englishman.

I expect, God willing, to leave this place for St. Petersburg on Friday next, the day of the sailing of the steam Packet & I hope to reach the end of my journey on or about the first of

June. I am anxious once more to feel settled. From all the information I can receive the diplomatic circle of St. Petersburg is a very agreeable one & the Emperor & Court entertain the most friendly feelings towards our Country. Prince Lieven, the Russian ambassador to this country, has been very polite to me. Although I do not anticipate much happiness during my continuance abroad yet I have no doubt with the blessing of Providence I shall be content. You need not expect to hear from me again until I shall reach St. Petersburg. Please to send this letter to mother & drop a few lines to Maria. Write to me often.

I feel very anxious to hear from George. I trust in Heaven that he may be restored to health. You will perceive by the papers that the cholera has almost entirely disappeared from this City: indeed it never was very formidable here.

I was at Covent Garden Theatre on Thursday evening & saw Young's Tragedy of the Revenge performed. Mr. Young, the most celebrated Tragedian of England, performed the part of Zanga. It was a most masterly performance & excited the deepest interest. Although I have always admired that play I never felt all its force & beauty until that night. Give my love to mother—Jane, Harriett, George, Mr. Lane & all the family and believe me ever to be your affectionate brother

James Buchanan.

Mr. Edward Y. Buchanan.

½ past 12. Monday May 14. The duke of Wellington is Premier. The members of his cabinet not yet known.

TO GENERAL JACKSON.[1]

Thomas' Hotel, Berkeley Square, London.
14 May 1832.

Dear Sir,

We arrived in Liverpool on the 3d Instant, and in this City on the 8th. On our way, between the two places, we passed over the rail road to Manchester and visited Birmingham, the ruins of Kenilworth Castle, Warwick Castle, Stratford upon Avon, the castle of Blenheim, Oxford &c. &c. Agriculture is much farther advanced in England than in the best portions of our own Coun-

[1] Jackson MSS., Library of Congress.

try. Every spot is cultivated, and this gives a richness and beauty to the face of the Country which renders it delightful at the present season. We expect to leave here for St. Petersburg in the Steam Packet on Friday next, and trust we shall be at the end of our journey about the first of June.

The newspapers will inform you of the resignation of the Whig Ministers and its causes; and that the Duke of Wellington is to be again the Premier. From the tone and temper of the papers on the liberal side of the question, the people of our Country may be induced to believe that there will be a revolution in England. Judging from what I have seen and what I have heard, (and my opportunities of obtaining information on both sides of the question have been considerable,) I think such an event very improbable. The King has undoubtedly disgraced himself. All parties admit that he is a weak man and much under the influence of those around him. One week ago he was the most popular monarch, who has sat upon the British throne for centuries: now he is not only detested but despised. Still a revolution is very improbable. The Duke of Wellington, no doubt has pledged himself to carry the Reform Bill, or something like it. He believes he will preserve his character for consistency by declaring that he is still opposed to the measure; but that the course of the late ministers had produced such a popular excitement in its favor, he was compelled to yield to the necessity; and that if he had not accepted office the Bill must have been carried by creating such a number of new Peers as would have destroyed the character and dignity of the House of Lords. The people will not refuse the Bill though it be tendered to them by Tory hands. Indeed I should not be astonished if Wellington would again become popular. His windows have been boarded up for some time to prevent the mob from breaking them, and yet it is said when he went to the Palace on Saturday last he was cheered by the people. The truth is that so many of the middle classes which are the bone and sinew of England are interested in the public Stocks, in the Church and in the institutions and abuses of the Country, that a popular revolution is at this time a most impossible event. If however the people should obtain such a representation in Parliament as the Reform Bill proposes, I have no doubt this change will eventually lead to the destruction of many abuses, to the advancement of liberty, and it may be finally to a Republican Government. I am persuaded however this last event is far distant.

I have been convinced since I came here that the American character is rapidly rising in the public estimation. Indeed an intelligent American informed me yesterday, that in regard to our country, there was danger, the public feeling here having been long in one extreme would run into the opposite. Without flattery, this change in our favor may be in a considerable degree attributed to yourself. I have been in no company since I came to England that your name has not been mentioned in terms of the highest approbation. Your selection first of Mr. McLane and then of Mr. Van Buren for the mission to this Country was in the highest degree auspicious. They were both very popular, and Mr. Van Buren's rejection by the Senate is much regretted.

Permit me however to make one suggestion to you. The tories of this Country cannot possibly love the U. S. or its government. They no doubt believe that our example has produced the change in public feeling here which must eventually liberalize the Government and destroy their power. The new administration will be of a rank tory character, and all concessions which they may grant to the people will be extorted. Under all circumstances, would it not be advisable to send a minister here immediately? Such a man as you will select might not only do much good but prevent evil. An able and a firm man who would maintain the rights of his own Country and command the respect of the people here would confirm the favorable impression which has already been made. Such a minister could not have a better auxiliary than Mr. Vail, in the character of Secretary of Legation.

I have met Mr. Levett Harris[1] in London who has been exceedingly friendly and polite. He gave me an introduction to Prince Lieven with whom he seems to be on intimate terms. The Prince has treated me with great kindness. Indeed he immediately offered to send by his courier any communications which I might have to make to Mr. Clay, and I embraced this opportunity of writing to him to have suitable accommodations prepared for us on our arrival. Russia now exercises a vast power over the affairs of Europe. The internal condition of both England and France is such as to leave her almost uncontrolled.

I am much pleased with Mr. Barry. I find him to be an

[1] Leavitt Harris, of Pennsylvania, was appointed secretary to the special mission to St. Petersburg to negotiate a peace with Great Britain in 1813. In 1814 he was appointed chargé d'affaires at St. Petersburg. He held a similar position at Paris in 1833.

agreeable and intelligent companion and no doubt he will be useful to me.

These crude speculations for your private use have been written in much haste this morning for the mail. Up till this time, with the exception of the Premier, the members of the new Cabinet are not known. I again repeat, that whether the Wellington administration shall long continue or not—there will be no revolution. I think it will continue for some time. I have already seen enough in this Country to make me thank my God I was born an American rather than an Englishman.

Ever your friend with gratitude and respect

JAMES BUCHANAN.

GENERAL ANDREW JACKSON.

P. S. Please to remember me to the members of your family, Mr. Barry and Mr. M'Lane. If it be not too much trouble, I would thank you to inform the latter that his letter to Mr. Bates has rendered me essential service.

DIARY, MAY 22-24, 1832.[1]

Tuesday, May 22d.

The appearance of Hamburg is calculated to make a favorable impression. It is situated on the northern bank of the Elbe, the river here running a little to the north of west. The old part of the town along and near to the river has a very antiquated appearance. Most of the houses are built with their ends fronting on the street, and they are composed of wooden frame-work, the interstices being filled up with brick. In this respect they resemble the ancient houses of Lancaster. Many of these houses are three stories, and some of them more in height up to the square—the gable end, and above it, contains one and two and three stories with windows on the street until it comes to a point ornamented with various figures.

The new part of the city is beautiful. In the northern part of it there is a small lake, called the "Binnen Alster," nearly square, and about a quarter of a mile on each side. Around this lake, except on the northern side, there are ranges of very

[1] Curtis's Buchanan, I. 140

fine houses built in the modern style, at a considerable distance from it, so as to leave room not only for the street, but for spacious walks shaded by trees, with benches placed at convenient distances. Still further to the north there is a larger lake communicating with the former called the "Grosse Alster." All around this lake and along the small stream which feeds it there are shaded walks, public gardens and grass plots laid out with much taste, and kept in perfect repair. The graveyard in the midst of them shows that man's long home may be made a subject of attraction for the living; and my own feelings taught me that those who are led to the place appointed for all living, from curiosity, may leave it under solemn and useful impressions.

I called this morning upon John Cuthbert, Esq., our consul, and left at the house of Mr. Gossler, a senator of Hamburg, a letter of introduction, with my card, which I had received from his brother at New York. Mr. Cuthbert called with me on Monsieur Bacheracht, the consul-general from Russia, who was sick in bed, and I left at his house the letter from Prince Lieven. We also called on Mr. Parish, but did not see him.

This is one of the ancient free cities of Germany. It is governed by a Senate, consisting of twenty-four members, composed of lawyers and merchants, each one-half. The Senate fills up its own vacancies as they occur. It also elects four of its own members burgesses, in whom the executive authority is vested. The deliberations of the Senate are in secret. The duties on goods imported are but one-half per cent. *ad valorem*, and the other taxes upon the people are very light. They appear to be contented and happy, and I have yet seen but one beggar on the streets. Indeed their language and appearance strongly reminded me of Lancaster. The Senate also elects four Syndicks, but not of their own body.

According to their laws no foreigner can be a resident merchant here, unless he goes through the forms and submits to the expense and inconvenience of becoming a burgher. Mr. Cuthbert claimed for an American naturalized citizen this privilege under our treaty with Hamburg, without becoming a burgher, and after some correspondence on the subject it was granted. This is a privilege which the English have never yet obtained. I advised Mr. Cuthbert to send the correspondence to the Secretary of State.

The outlet of the lakes into the river furnishes a water-power sufficient to turn several mills, and water for a canal which

is very useful in connecting the river with the upper part of the city. It is strange that not a single dock has been erected on the river by this ancient city.

The constitution of Hamburg, although far from being free in the just acceptation of the term, has secured to the citizens enviable advantages, compared with many of the other states of Germany.

We dine with Mr. Gossler to-morrow.

(Here follows a minute account of the coins in common use in Hamburg.)

May 23d.

We dined with Mr. Gossler, the son, in the country; his father, to whom we had the letter, being now in England. Our host had resided in Boston, and about three years ago married Miss Bray of that city. She is related to the Elliott family, and is a sprightly, pleasant woman, who talks very well. Besides our host and hostess, the company consisted of Mr. William Gossler, their uncle, an old bachelor; Mr. Charles H. Carnegy, a young Scotchman who came in the packet with us from London; Mr. Wainwright, from Boston, also our fellow-passenger; Mr. Barry, and myself. We spent a very agreeable afternoon and evening. We received an invitation from Mr. Richard Parish to dine with him on Sunday at his country place, which we were obliged to decline, intending to leave for Lubeck on Saturday.

Thursday, May 24th.

In the morning, we visited Altona, a Danish town in Holstein adjoining Hamburg, and below it on the river. Its appearance is similar to that of the old part of Hamburg, though it contains some fine modern houses. The public walks are also pleasant here. The population is said to be 25,000. In the afternoon, we ascended the steeple of St. Michael's, and had a fine view of the city. It is 480 feet in height. The church is a fine building. I observed in it an altar, at some distance from the pulpit, with an image above it of our Saviour on the cross. This in a Lutheran Church was new to me.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 1) AMERICAN LEGATION
ST. PETERSBURG 3. June 1832.

DEAR SIR

I have just heard that an American Captain is about to leave this City for Boston to-day and I embrace the opportunity of informing you that I arrived here last evening. I shall address a note to Count Nesselrode to-morrow morning and as soon after the formality of my presentation as prudence shall dictate I will introduce to the attention of this Government the important objects of my Mission.

I shall take the present occasion to state, a most extraordinary fact, that Mr. Clay[2] has received no newspapers from the United States since January last and they were dated in August. If there should be no other method of obtaining information from home would it not be proper to authorise the employment of a Courier at least once a Month during the winter between this place and London? I shall however notice this subject hereafter.

With sentiments of the highest respect
I remain yours,

HON. EDWARD LIVINGSTON. JAMES BUCHANAN.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[3]

(No. 2) ST. PETERSBURG 12. June N. S. 1832.

SIR

The first duty which demanded my attention, after my arrival in this Capital, was to make myself accurately acquainted with the existing state of the negotiation between the United

[1] MSS. Department of State.

[2] John Randolph Clay, of Pennsylvania, was secretary of legation at St. Petersburg from 1830 to 1835, and chargé d'affaires from 1835 to 1837. He was secretary of legation at Vienna from 1838 to 1840, and again at St. Petersburg from 1845 to 1847. In 1847 he was appointed chargé d'affaires to Peru, where he remained till 1860, serving after 1853 as envoy extraordinary and minister plenipotentiary.

[3] MSS. Department of State. Extracts printed in H. Ex. Doc. 111, 33 Cong. 1 Sess. 57.

States and Russia. This task was rendered comparatively easy by a reference to the Record Books of the Legation, which have been kept by Mr. Clay in such a manner as to command my approbation.

I soon discovered that I had left the United States with but little knowledge of what had been done by my predecessor. Your indisposition during my visit to Washington in March last was, without doubt, the cause why you did not communicate to me all the information on this subject, which must, I presume have been in the Department of State.

I found that Mr. Randolph, during his short residence in this City, had applied himself with energy and despatch, to accomplish the purposes of his mission. Within a short period after his arrival, he had placed in the possession of the Russian Ministry, "every paper public and private," with which he had been entrusted, touching the negotiation which the President had instructed him to open with this Government. Notwithstanding this frankness, which was certainly the highest evidence of confidence and therefore the greatest compliment which could have been paid to the Imperial Ministry; and notwithstanding the earnest attempts made by Mr. Randolph whilst he remained here, and continued by Mr. Clay afterwards, under his direction, to obtain an answer to the propositions he had made in behalf of his Government, no intimation has yet been given, whether Russia would be willing to treat with us either upon the subject of Commerce and Navigation or that of Maritime Rights. Now although from all the circumstances attending the transaction, I am not disposed to attribute this omission to any want of proper respect towards the Government of the United States; yet I feel that it has placed me in an embarrassing situation. All my instructions, (with the exception of those you have given me which are merely supplemental) together with the projet of the Treaty concerning Maritime Rights, and a private Letter of Mr. Van Buren to Mr. Randolph (a copy of which is on file in the Legation) are already in the possession of the Russian Ministry.

Under these circumstances I have determined to pursue a prudent and cautious course. I shall not for the present ask Count Nesselrode for any answer to the propositions made by Mr. Randolph. I shall wait until I become better acquainted with the views and wishes of the Imperial Ministry before I introduce the Negotiation to their attention, or do any act which

can subject me to the charge of importunity. In the meantime should a favorable opportunity present, I shall not fail to embrace it with all the ability in my power.

I am anxious, before any answer shall have been given by this Government, to present to Count Nesselrode some views of my own in relation to a treaty of Navigation and Commerce between the two Countries. The argument contained in the instructions to Mr. Randolph proves conclusively, that such a Treaty would be highly beneficial to the people of the United States. This seems to be its principal object; and it does not present the corresponding advantages to Russia in an equally distinct and imposing manner. Now it is clear that the best mode of obtaining such a Treaty from the Imperial Ministry will be to convince them that it would also promote the best interests of their Country. For this purpose it is not sufficient to inform them, that if they should make the proposed Treaty with us their ships would be permitted to enter the ports of the United States, under the provisions of the Act of 1828 instead of that of 1824. Considering the small number of Russian Vessels which trade to the United States, and that they are generally if not always laden with the productions of their own Country, this is the offer of but a nominal privilege. It is the truth, and as an American Citizen I feel proud of it, that our Treaties of equal reciprocity on paper concerning Navigation and Commerce are never so in practice. Give to American Navigation an open sea and equal advantages with that of other Nations, and the whole civilized world must now admit, that we can surpass every competitor. I have reason to know that Prince Lieven is perfectly aware of this fact.

But there are other powerful reasons why Russia should be willing to enter into a Commercial Treaty with us; and I shall endeavour to be well prepared upon this branch of the question, before I request a conference with Count Nesselrode. These will be more appropriately embraced in a future Despatch.

And here permit me to observe that I am deprived of the means of presenting this subject fully and accurately to the Russian Ministry, for want of the necessary books. I have not even access to the Treaty of 1801, between England and Russia, which has been heretofore interposed by the latter as an obstacle to the conclusion of a Commercial Treaty with the United States. In Paris or in London, ready access can be had to every species of information: in this Capital, where directly the reverse is

the truth, does not the public interest imperiously demand that the Legation should be furnished with such books as are indispensible to enable the Minister to perform his duties to his Country?

In regard to the Treaty concerning Maritime Rights, I am placed in this position, that if the Ministry here should offer to adopt our projet now in their possession, it is doubtful whether I could accept the proposal. The modifications which you have suggested to this Treaty are, in my humble judgment, wise and politic, and ought not lightly to be abandoned. Although it is to be based upon the principles adopted by the Armed Neutrality, I am unable to obtain access to their Treaties or proceedings. There is not a copy of Marten's collection of Treaties for sale in St. Petersburg.

From all these considerations, I deemed it prudent on my presentation to Count Nesselrode to act with circumspection. This took place on Tuesday last. A good deal of conversation passed between us, but not much worthy of repetition. After the ordinary salutations, he expressed his satisfaction that the relations between the United States and Russia were of a character so friendly. I cordially reciprocated this sentiment, and observed that we had received many marks of kindness from the Imperial Government, and there had been one of such a character as to make a deep and lasting impression both on the President and people of the United States; and that was the offer of the Emperor Alexander to become the mediator between England and ourselves, whilst we were engaged in what by many was considered an unequal contest. He replied, as I thought rather in an enquiring and hesitating manner, "But your difficulties with England are now all over." I answered in the affirmative, and added that we had no reason to be dissatisfied either with the events or termination of that war.

The Count then referred to the Treaty of Adrianople and to that between the United States and the Sultan as affording the strongest evidence of the kind feelings of the present Emperor towards our Government, and observed that these Treaties would open a wide field for our Commercial enterprise. I assented in general terms to both these propositions and strongly expressed my sense of the Emperor's friendship towards our Country.

At the moment I thought, and still think, it was possible, that he turned the conversation in this manner to afford me an

opportunity of alluding to the proposed Commercial Treaty. This however was but a bare suspicion and one on which I did not deem it prudent to act.

The Count then asked me when I had left the United States and I told him on the 8th of April. He said I had made a quick passage; he had heard of me in London through Prince Lieven. I observed I had remained but a short time in England, that the state of Mr. Randolph's health having compelled him to absent himself from St. Petersburg for a considerable time before the termination of his Mission, it was deemed proper and respectful by the President that I should not loiter on the way. I also embraced this occasion to state that my passage between New York and Liverpool had not been so short as was common at the season of the year, that American Vessels were quick sailers and *that some of them had made two voyages during the last season between the United States and St. Petersburg. At this he expressed his surprise. I then added, I doubted not, a greater number would perform the same voyages the present season, that such a spirit of emulation existed among the Americans, what one had accomplished many would attempt.*

There was much other conversation on such subjects as he thought proper to introduce, but none of it of sufficient importance to detail.

I was yesterday presented to the Emperor and delivered to him my letter of credence. I think I cannot be mistaken in supposing that His reception of me was unusually kind and cordial. Upon the delivery of my letter, I observed, that I had been instructed by the President to express his ardent desire, by every means in his power, to perpetuate the friendly relations which have heretofore so happily existed between the United States and Russia. I added that the President in common with the people of the United States entertained the kindest feelings towards his Majesty, and I could assure him that the friendship he had displayed towards them, had made a deep and lasting impression upon their hearts. He very promptly, and with some feeling, expressed his ardent desire to maintain the most friendly relations with the United States, and said he had inherited these sentiments from the Emperor Alexander.

In the course of our conversation, he told me it would give him great pleasure to afford Captain Barry every opportunity of being present at the Military parades. After thanking him for his kindness, I stated I thought I might assure his Majesty,

that if any of his officers, whether Naval or Military, should ever visit the United States, The President would afford them every facility which our own officers enjoyed, for obtaining information.

He replied that he had been already convinced of this fact by the conduct of our Government towards Admiral Avinoff.

It is unnecessary to repeat any more of the conversation. At the conclusion of our interview, he advanced and cordially shook me by the hand, expressing the wish that my time might pass agreeably in St. Petersburg.

The Emperor is a man of fine manners, and of commanding and dignified appearance. He was plainly and simply dressed. Whatever opinions we may entertain of his politicks, it is admitted by all here, that in his private relations, his character affords an example for his whole Empire. As a husband, a father, a brother and a friend, he stands pre-eminent among his subjects.

After I had retired, Mr. Clay and Captain Barry were presented, and were graciously received.

Captain Barry and myself were also presented to the Empress, but I do not consider that what took place upon that occasion forms a proper subject for a despatch. I need scarcely add that we were kindly received.

Baron Krudener is now here, and it is my impression he will return to the United States, in the course of the summer.

With sentiments of the highest respect

I remain truly yours,

To the Honorable Edward Livingston
Secretary of State.

James Buchanan.

TO GENERAL JACKSON.[1]

St. Petersburg, June 22, 1832.

Dear General:—

You will, ere this reaches you, have heard of my arrival in this Capital, through the Department of State. Certainly it is not the place I should select for my residence, though it may be

[1] Jackson MSS., Library of Congress. Printed, with inaccuracies, in Curtis's Buchanan, I 142–144, 164–165.

justly termed a City of palaces. The climate is healthy, but very cold. Indeed it can scarcely be said that summer has yet commenced. Their winter continues about seven months. At this season there is literally no night. I feel confident I could read common print at 12 P.M. I use no candles.

The Americans and English here say they suffer more from the heat than the cold during winter. All the houses have double casements, double windows, and very thick walls, and they are heated by stoves to a high degree of temperature. The Russians still wear their cloaks in the streets.

The great objection which an American must feel to a residence in this Country does not arise from the climate, though that is bad enough. It is because here there is no freedom of the Press, no public opinion, and but little political conversation, and that very much guarded. In short, we live in the calm of despotism. And what makes this situation much more unpleasant to me is, that from some cause or other, I know not yet what, this mission seldom receives any letters or newspapers from the United States. I beg that you would take up this subject yourself, and then it will be attended to. But this by the way.

It must be admitted, however, if we can believe the concurrent opinion of all the foreigners resident here with whom I have conversed, that the Emperor Nicholas is one of the best of Despots. As a man of excellent private character, as a husband, a father, a brother, and a friend, his life presents a fit example for all his subjects. *But still he is a despot.*

But little occurred on my presentation to his Majesty worthy of repetition, except what is contained in the Despatch. He told me he had one American in his service as his Aid—that was Mr. Munroe; that he was not then in Petersburg, having gone on board one of the ships in the fleet for the purpose of making a campaign (for exercise and instruction, I presume), and that he intended to be transferred from the Military to the Naval service.

The Empress talked very freely. She spoke on several subjects, and with great rapidity. Amongst other things she observed we were wise in America not to involve ourselves in the foolish troubles of Europe; but she added that we had troubles enough among ourselves at home, and alluded to our difficulties with some of the Southern States. I endeavored in a few words to explain this subject to her; but she still persisted in expressing the same opinion, and, of course, I would not argue the point. The truth is, that the people of Europe, and more especially those

of this Country, cannot be made to understand the operations of our Government. Upon hearing of any severe conflicts of opinion in the United States, they believe what they wish, that a revolution may be the consequence. God forbid that the Union should be in any danger! If unfortunate events should occur tending to destroy the influence of our example, constitutional liberty throughout the rest of the world would receive a blow from which it might never recover. In making these remarks, I do not mean to state that the Russian Government are unfriendly to the people of the United States. On the contrary, I believe they prefer us decidedly either to the English or French; but yet they must attribute to our example the existence of those liberal principles in Europe which give them so much trouble. Upon the whole, my interview with the Empress was quite agreeable.

There are three Ambassadors at this Court: Lord Haytesbury, the English; the Marshal Duke of Treviso (Mortier), the French; and Count Figlemont, the Austrian; and a number of Ministers Plenipotentiary of my own grade. In point of rank I am at the tail of the list, and I should be very sorry to suppose I would ever reach the head. The rule upon this subject, however, is wholly unexceptionable. The Minister who has been longest here ranks the highest in his own grade.

The Diplomatic Corps have received me very kindly. This I may attribute to the high character my country is everywhere acquiring. Your foreign policy has had no small influence on public opinion throughout Europe. It is supposed Marshal Mortier is not very agreeable to this Government. He is the officer who blew up the Cremlin.

I have taken a comfortable and well furnished house in a beautiful situation fronting on the Neva, to which I expect to remove next week. My family will consist of Mr. J. Randolph Clay [Secretary of the Legation], whom I have invited to live with me, Lieutenant Barry [private secretary], and myself. My expenses will be great, but I shall endeavor to keep them within my outfit and salary.

From an examination of the correspondence between Mr. Clay and the Department I fear I shall have difficulties in the settlement of my accounts. It was not possible for him with the most rigid economy to exist as Chargé des affaires upon his salary, had he even received all to which he was entitled, and yet he has received but about $1880 per annum. So far as I can

understand the subject, the difficulty has arisen solely from the circumstance that here we are authorized to draw on Amsterdam, and not on London. Surely this circumstance cannot change the amount of salary to which a minister is entitled by law, nor ought Mr. Clay to receive less at a more expensive Court than Mr. Vail receives in England. Mr. Livingston told me it would make no difference to me whether I drew on Amsterdam or London, and this may eventually be the case; but I am very anxious to avoid the difficulty of having a troublesome account to settle with the Department. I should esteem it, therefore, a particular favor, if it be just, that you would authorize me to draw on London. Every difficulty on this subject would be removed, if we were allowed five rubles here for a dollar, which is the manner in which our Consul settles his accounts; and I should suppose, from a communication received by Mr. Clay from my friend Mr. Pleasonton, that he now believes this to be correct. Pardon me for thus troubling you with my own affairs.

I am not without hope of succeeding in the negotiation, though I can say nothing upon the subject with the least degree of certainty. I entertain this hope chiefly because I am now fully convinced it is their interest to enter into a Treaty of Commerce with us. In a casual conversation the other day with Baron Krudener I explained my views of the great advantages Russia derived from our commerce with St. Petersburg, and how much, in my opinion, the agriculture and the general prosperity of the Colonies on the Black Sea would be promoted by encouraging American Navigation in that quarter. Yesterday I had another conversation with the Baron from which it was evident he had been conversing with Count Nesselrode upon the subject; and the impression which I have received from him is rather favorable. Still it is of a character so vague that I place but little reliance upon it. I shall see Count Nesselrode at one o'clock to-day, and will keep this letter open until after our interview.

3.30. I have just returned from Count Nesselrode's, and from our interview I entertain a hope, I may say a good hope, that I shall be able to conclude both Treaties with this Government. I am sorry I shall not have time to prepare a despatch for Mr. Livingston upon this subject to be sent by Captain Ramsay. He shall hear from me, however, by the *first safe opportunity.*

There is one subject to which I desire briefly to direct your

attention. I should write to the Department about it, but my views are not yet sufficiently distinct to place them there upon record, and besides there is not now time.

In case a Treaty should be made with this Government on the subject of Maritime rights, its provisions ought to be framed with great care, because it will probably be a model for similar Treaties with other nations. In looking over the project in my possession, I find one provision which it strikes me the Cabinet ought to re-examine. It is the proviso to the first Article. This proviso was not introduced into our earlier Treaties. It first found a place in that with Spain, and has since been copied into our Treaties with Colombia, Central America and Brazil.

Why should this limitation exist? I shall allude to my views by presenting a supposed case, for I have not time to do more.

Suppose Great Britain, which does not recognize the principle that "free ships make free goods," and Russia to be engaged in war after the Treaty, the United States being neutral.

1. Would it not be greatly for our interest (more particularly as from our character we shall generally be a neutral nation) if our ships could carry the goods of Englishmen to Russia and all over the world, without these goods being subjected to capture by the armed vessels of Russia?

2. Would not great embarrassments arise if Russian vessels of war, after ascertaining that a vessel belonged to a citizen of the United States, which is all they could do under the general principle, should then under the proviso be permitted to inquire into the ownership of the Cargo, and if they suspected it belonged in whole or in part to English subjects, to seize and take it before a Prize Court?

3. This proviso could only have been introduced to force England into the adoption of the rule that "the flag covers the cargo;" but how can it produce that effect? It will render the property of an Englishman as insecure on board an American as a British vessel; it being equally liable to seizure in either. But let the rule be general, let our flag protect the Cargo, no matter who may be the owner, and then English merchants will have the strongest inducements to employ our navigation.

4. Would not the proviso make the Treaty itself a felo de se, whenever Russia shall be at war with a nation which does not recognize the general rule?

5. If England should at any time be neutral and we at war, the general rule adopted between us and Russia will not prevent

us from capturing our enemies' goods on board British vessels.

6. These suggestions become of much more importance when we consider that we may have similar Treaties with many nations.

These crude remarks are merely intended to direct your attention to the subject. I consider it very important and should like to hear from the department in relation to it as soon as possible. We shall first take up the Treaty of Commerce, I presume; indeed Count Nesselrode has asked for my views in writing on that subject.

It might be of consequence to me to have a copy of our Treaty with Turkey.

In haste, I am, with the greatest respect.

Your friend,

JAMES BUCHANAN.

P. S. Please remember me to the Members of your Cabinet and also your family.

2d P. S. Captain Ramsay, for whom I had obtained a Courier's passport, will not go today; but I have fortunately just heard of a vessel about sailing for Boston, by which I shall send this.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 3.) LEGATION OF THE UNITED STATES
ST. PETERSBURG 22 June 1832.

DEAR SIR/

I embrace the present opportunity of transmitting to you a Duplicate of my Despatch No. 2.

I shall avail myself of the present occasion again to introduce a subject to your attention, promising henceforward never to notice it, unless it should be to express my gratitude for the correction of the evil.

The Mission to this Court is, without doubt, in the present state of Europe, more important than any which our Country maintains abroad. When we have no special business to transact, it might almost as well not be supported, as to condemn the

[1] MSS. Department of State.

Minister to remain in ignorance of political events as they occur in the United States. Not only this Government, but all the Missions established here which take any interest in American affairs obtain information of what transpires in our Country, long before it reaches this Legation. There can be no good reason for this, during the summer, when the communication between London & St. Petersburg is conducted by regular Steam Vessels, requiring not longer than from 7 to 8 days to pass between the two cities. I received Galignani's Messenger of the 4th Instant some days ago, which simply states the fact, that New York Papers up till the 11th May had arrived in London on the 2d instant; whilst I have received neither letter nor paper from the United States, though I sailed from New York on the 8th of April. When any shall arrive is wholly uncertain, judging from the experience of Mr. Clay.

I shall feel myself much indebted to you, if you would order one or two of the *Weekly* Papers published in New York to be forwarded regularly by the Packets either to Liverpool or London, to the care of Mr. Vail. I prefer the Weekly papers, because the postage here is enormous, nay almost incredible.

Should negotiations be pending between this Government & myself, after the navigation shall close, I know not how I could then send my Despatches to the United States. To place them in the Post Office would, as I am informed, be a certain exposure not only to the Imperial Ministry, but probably to other Governments which might feel an interest in preventing our success.

I left Washington under the impression that all the public Documents necessary to complete the set given to Mr. Randolph would be forwarded by the Department to me at New York. I therefore felt much disappointed, when upon examining the trunk sent to me by Mr. Barry, I found that it contained none of those of the first Session of the twenty first Congress, except the second volume of Executive Documents. When I made this discovery it was too late to correct the mistake before my embarcation.

It would probably have been of some importance had I brought with me the last Report of the Secretary of the Treasury on the Commerce & Navigation of the United States. I would thank you to send it by the first opportunity.

I forgot to mention in my last Despatch, that among the papers delivered to me by Mr. Vail, I neither found "a special passport for myself & suite," nor the printed instructions to the

Diplomatic Agents of the United States. I obtained a copy of the latter from Mr. Vail in London. Mr. Clay had also received them.

I have only time to add, that I had a long interview with Count Nesselrode this afternoon, & I entertain a reasonable hope that I shall be instrumental in accomplishing the purposes of my mission. I have made some crude & hasty remarks, in my letter of this day to the President, on a subject to which I earnestly request that you would devote your immediate attention. I should have presented to you my views of the question in this Despatch had time permitted.

Yours very respectfully

JAMES BUCHANAN.

THE HON. EDWARD LIVINGSTON
Secretary of State &c.

TO COUNT NESSELRODE.[1]

(Enclosure in No. 4.)

[June 26, 1832.]

The Undersigned, in obedience to the request made by His Excellency the Vice Chancellor, at the conclusion of their interview on Friday last, takes great pleasure in reducing to writing the suggestions which he then had the honor to submit in person, in relation to the proposed Treaty of Navigation and Commerce between His Imperial Majesty and the United States of America.

The President of the United States still entertains the same desire which he has heretofore expressed to conclude such a Treaty. He is now more firmly convinced than ever, that it would essentially promote the best interests of both countries, and confirm that mutual friendship by which they have so long and so happily been united. Indeed if other powerful reasons did not exist for the President's anxiety upon this subject, this alone would be deemed sufficient, that whilst the United States have already concluded such Treaties with almost every other Commercial nation, Russia, with whom our relations have been so intimate, should not form an exception. Although such are the feelings which actuate the President, he is fully sensible, that

[1] MSS. Department of State. Enclosed with Mr. Buchanan to Mr. Livingston, June 29, 1832, infra, p. 210.

however much he might regret the event, the United States will have no cause for complaint, should his wishes unfortunately not coincide with those of His Imperial Majesty.

Your Excellency has long had before you the general instructions which were given to my predecessor Mr. Randolph, for the conclusion of a Commercial Treaty. The Undersigned doubts not but that the frankness and candour, which that gentleman displayed in submitting his instructions to the Imperial Ministry, have convinced them, that in his negotiations with Russia, he desired no concealments.

It would be an unnecessary waste of Your Excellency's time, should the Undersigned attempt to repeat the views and the arguments contained in those instructions. From them you will have learned, that it is the established policy of the United States to offer to all nations a perfect reciprocity of the advantages of Navigation and Commerce. Each nation which permits the vessels of the United States and their cargoes to enter her ports, upon the payment of the same duties with her own vessels, has the ports of the United States thrown open to her navigation and commerce, upon the same terms as if they belonged to American Citizens. The policy of Russia upon this subject, so nearly approaches to that of the United States, that we permit her vessels and such a portion of their cargoes as consist of her own native productions to enter our ports, upon the same terms as if they belonged to our own Citizens. It is only when Russian vessels are laden with the productions of other countries, that their cargoes pay any discriminating duty.

Considering the immense extent of the coast of the United States, the number of their Ports, and the magnitude of their trade, this discrimination may hereafter prove inconvenient to Russia. Judging from the attention which His Imperial Majesty has bestowed both upon his Naval and Commercial Marine, and the success which has so happily attended his efforts, the Undersigned anticipates that the day is not distant, when he shall enjoy the pleasure of seeing many vessels under the Russian flag entering the ports of the United States. Whilst so long a voyage affords the best means of training and disciplining sailors for the Imperial Navy, the heavy articles with which the United States are supplied by Russia will always furnish a large proportion of the freight. Still however it will often promote the interest of those employed in such a trade, to make circuitous voyages and to bring the productions of other countries, as well as those

of their own, to the United States. In such an event, should the Commercial regulations of the two countries continue upon their present footing, that portion of the cargo of Russian vessels which may be the production of other nations will be subjected to a discriminating duty.

Whilst the United States consider the existing trade with Russia highly advantageous to themselves, it is certain that no trade, in proportion to its extent, could be more beneficial to Russia. This sufficiently appears from a bare inspection of the list of articles, with their value, which she annually furnishes to the United States.

This trade imparts a most powerful impulse both to the agriculture and manufactures of Russia. The extensive demand of the United States for her hemp, and the different manufactures of hemp and flax, whilst it greatly enhances the value of the productions of her soil, affords powerful encouragement to the most valuable species of her manufactures. Those domestic manufactures, the raw material of which is an agricultural production of the Country, best deserve the protection of it's laws. It is then that agriculture and manufactures directly and mutually sustain each other. Bar Iron approaches nearly to the same character; because the raw material is taken from the soil, and it's manufacture requires the labour of many hands, and of consequence, the consumption of many agricultural productions. This is such a trade as enriches nations, and at the same time renders them more powerful.

On the other hand, Russia receives in exchange, but a small quantity of the productions of the United States. The advantages which we derive from the trade consist chiefly in the employment of our navigation. Nearly all our vessels either make circuitous voyages and bring to St. Petersburg sugar, coffee, and other West India produce necessary to supply the wants of Russia, or they come here in ballast with specie or Bills of Exchange. They can very rarely bring an entire cargo of native productions directly from the United States, for which there would be a demand in Russia.

And here it may be worthy of remark, that this trade supplies Russia with the greater part of the raw Sugar which is imported into St. Petersburg; and thus furnishes the material of an extensive and valuable manufacture.

But there are other considerations of great importance connected with this subject. Under the favorable auspices of His

Imperial Majesty, the United States have concluded a Treaty with the Porte, and the trade of the Black Sea is now open to our Navigation. The extensive and fertile territory along it's shores, belonging to Russia abounds in the richest agricultural productions, and they may be increased to an almost unlimited extent. How can this valuable object be best accomplished? Only by opening new markets for their reception, and transporting them to Constantinople and to the coasts and islands of Asia, Africa and Europe in the Mediterranean. The Undersigned firmly believes, that if American Navigation were once fairly introduced into that Sea, it would greatly contribute to effect this purpose, and thereby enhance the value of the Russian possessions along it's borders. Without the imputation of national vanity, he believes, from the well known enterprize of his countrymen, he may assume the truth of this position.

How then can the existing trade between the two Countries be best preserved and extended, and this new and valuable trade to the Black sea be created? The Undersigned confidently answers by means of a Treaty of Navigation and Commerce.

It is true, that the American trade has always received a liberal protection from Russia, and that the exalted character of His Imperial Majesty affords the strongest guarantee that the same conduct will continue to be observed; but yet it is equally certain, that merchants will always feel greater security, when their trade is sanctioned by the faith of Treaties. This sanction is rendered the more necessary for the purpose of promoting our trade with Russia, from the circumstance, that we already have Treaties of Navigation and Commerce, founded upon the most liberal principles both with Sweden and with Austria, two Nations whose ports are nearer to the United States and who can furnish us with most of the same articles which we receive from the dominions of His Imperial Majesty.

Since the arrival of the Undersigned here, it has struck him as an extraordinary fact, that there is not a single resident American merchant or factor in this Capital, notwithstanding the extent of the trade between the two Countries. He infers that the only reason which can exist for a circumstance so strange, is, that American Merchants are unwilling to come to a Country so distant, and incur the trouble and expense of making an establishment, without feeling secure in the continuance of their Commerce. No other reason can be assigned; because the American people well know, that they would be treated as kindly in St.

Petersburg as those of any other Nation. Let a Treaty of Navigation and Commerce be concluded between the two Countries, and the Undersigned doubts not, that ere long, American merchants and factors will be established in this Capital, extending and disseminating Russian productions over every portion of the world, where they can find a market.

In relation to the trade with the Black Sea, the Undersigned is strongly impressed with the idea, that a Treaty of Navigation and Commerce, at the present moment, is necessary to call it into existence, to any advantageous extent. It is to our merchants a new and untried experiment, in a remote portion of the world. Most of the Russian productions which will form the subjects of this trade are of such a character, that there will be no great demand for them in the United States. On our part therefore this must be, to a considerable extent, a circuitous and carrying trade, between the Russian possessions and those of other nations along and near the coasts and in the islands of the Mediterranean. The best, indeed the only mode of inducing our merchants to enter extensively upon it will be to hold out to them the security of a Treaty, to continue for such a period, as will justify men of prudence in embarking their capitals in this, to them, remote and distant quarter of the globe. Should the views of His Imperial Majesty accord with those of the President upon this subject, the Undersigned will venture to hazard the prediction, that, in the course of the next year many vessels under the American flag will be found trading with the Russian possessions in the Black Sea.

The Undersigned, has therefore the honor of proposing the provisions of the Treaty between Austria and the United States, which he has placed in the possession of His Excellency, as the basis of a Treaty of Navigation and Commerce between His Imperial Majesty and the United States.

The Undersigned deems it unnecessary, in this communication, to allude to the proposed Treaty, between the two nations concerning their neutral rights, in any other manner, than to refer His Excellency to the extended and able view of the subject taken by Mr. Van Buren, in the instructions to Mr. Randolph. It will afford him very great pleasure to furnish His Excellency with copies of all or any of the Treaties, which have been concluded by the United States, with different nations both of Europe and America, for the purpose of establishing with each of them, the principle so vitally essential to the protection of neutral

Commerce, "That free ships shall make free goods," and of defining what shall be deemed a lawful blockade and what articles shall constitute contraband of war.

The Undersigned eagerly embraces this occasion to offer to His Excellency the Vice-Chancellor, the assurance of his most distinguished consideration.

St. Petersburg, June 14–26, 1832.

James Buchanan.

TO EDWARD LIVINGSTON.[1]

(No. 4.)

St. Petersburg 29th June N. S. 1832.

Sir/

Although the negotiation between Russia and the United States presented an unfavorable aspect upon my arrival in this City; yet as soon as I had acquired an accurate knowledge of the nature of the trade between the two countries, I began to entertain strong hopes, that the reluctance of this Government to conclude a Treaty of Navigation and Commerce might be overcome. I soon convinced myself that it was as much their interest, as ours, to conclude such a Treaty; and I knew if a similar conviction could be communicated to Count Nesselrode, the only difficulty would at once be surmounted.

This Government feels but little jealousy of the United States; much less than for either England or France. Our system of attending to our own affairs, and leaving other nations to do the same, has had the happiest influence upon our foreign relations. By this course of policy, the greatest effect is given to our example; and we thus more essentially promote the cause of liberty throughout the world, than we could do by the most direct and active interference in the concerns of other nations. Russia is certainly not unfriendly to us. She must be conscious that Europe is at this time a vast magazine of gun powder, and that the first spark applied to it will probably produce an explosion which may shake all it's thrones to their centre. In such a contest, she is well aware, that England and France must be arrayed against her. Under these circumstances, I have reason to believe, that the Emperor is very willing to be upon good terms

[1] MSS. Department of State. Extracts printed in H. Ex. Doc. 111, 33 Cong. 1 Sess. 58.

with the most free people upon earth, and that he is still more gratified at their disposition to cultivate his friendship. I therefore consider the time of my arrival to have been propitious.

My first approach, however, promised anything but success. About two weeks ago, I paid Baron Krudener[1] a visit, and purposely turned the conversation to the subject of the trade between the United States and Russia, and it's advantages to both nations. He observed, that under the influence of the Tariff of 1828, it was rapidly declining, and advanced some arguments to prove the impolicy of that measure. I asked him from what source he had derived his information, that the trade was declining; and he mentioned the Report of the Secretary of the Treasury concerning our Commerce and Navigation for the year 1830. I replied it was true, that had been an unfavorable year; but I could assure him, from official information which I had derived from our Consul here, since my arrival, that the trade had greatly increased during the last season. I also promised that I would procure and send him an abstract from the statement, on the faith of which I had made the remark.

In the course of the conversation, I took occasion, as opportunity offered, strongly to urge the advantages which Russia would derive from a Treaty of Navigation and Commerce with the United States. His reply to these remarks was, that Russia had adopted the same liberal system in it's commercial relations towards all nations, and he could not perceive the necessity for such a Treaty.

Once, indeed, he suggested, that by our Treaty with France, we had reduced the duty on French wines, and intimated, as I understood him, that if we were disposed to act in the same manner towards the article of Russia Hemp, that circumstance might change their views. To this suggestion I replied, that France had granted us an ample equivalent, by reducing her duty upon our Cotton, but that Russia could grant us no such equivalent, because she received scarcely any of our productions. He then expressed his belief that before long the manufactures of Russia would require much of our Cotton. I merely observed that such, at least, was not the case at present.

Towards the conclusion of our conversation he stated, he had not spoken to Count Nesselrode upon the subject, and what he had said was merely as a private individual. I told him, that

[1] Russian minister at Washington from 1827 to 1837.

such had been my impression, and that I had been conversing with him only in the character of a friend.

On the next day, I sent him an abstract of our trade with St. Petersburg, for the last season, taken from the Consul's Register, which exhibits a considerable increase above the previous year. At the same time, I addressed him a note, stating that from the number of arrivals which had already taken place, the present season, compared with those within the same period of the last, the trade would probably be much greater during this year, than it had been even in the year 1831.

On the 19th Instant, I addressed a note to Count Nesselrode requesting an interview, at any time, during the week, he might think proper to designate; and on the next day received his answer appointing Friday the 22d, at one O'Clock in the afternoon for our meeting.

Baron Krudener made me a visit on the 21st, and after some conversation on other topics introduced that of the proposed Treaty. Both his views and his manner had changed considerably since our last interview. It was evident he had been conversing with Count Nesselrode on the subject, though he did not mention that fact. He spoke as if it were probable a Treaty might be concluded, and said, "if we should make the Treaty you will be willing that it shall contain a provision to restore to us those sailors who may desert from our vessels, during their continuance in the United States." He observed, if this were not done, their vessels could not carry on a trade with our Country; and mentioned an instance in which the crew of one of them had nearly all deserted. I expressed a hope that we should be able to make an arrangement on this point which would be satisfactory to both parties.

In speaking of the Tariff of 1828, with which they are evidently much annoyed, he said he should be very glad, when he returned to the United States, if he could be instrumental in having the duties on hemp and Iron reduced. I told him I could not anticipate what might be the effect of his representations; that I had no doubt they would be treated with great respect.

I do not consider it necessary to detail any more of this conversation.

I waited on Count Nesselrode, according to his appointment, on Friday last. After transacting some preliminary business of little importance, I adverted to the proposed negotiation. He at once apologised for not having heretofore given an answer to

the propositions which had been made by Mr. Randolph, and said that the affairs of Poland first, and then those of Belgium had occupied so much of his time, as to have rendered it impossible for him to devote any attention to this business. He said those obstacles were now removed; but observed that he had only read over the instructions to Mr. Randolph once, about two years ago, and had never seen them since. He promised, however, that he would now examine them with care, and asked me if the President of the United States still continued desirous of concluding the Treaties. After my answer in the affirmative, he requested me to present to him any views I might think proper upon the subject.

A favorable opportunity being thus offered, I embraced it with all the ability in my power, and endeavoured to impress upon him the great advantages which Russia must derive, from the conclusion of a Treaty of Navigation and Commerce with the United States. He listened to me with profound attention, and from his enquiries as I proceeded, he seemed desirous, that his want of a perfect knowledge of the English language should not prevent him from understanding every part of what I said. For the substance of my remarks, I refer you to the communication which I made to Count Nesselrode on the 25th. Instant, a copy of which will accompany this Despatch.

When I had concluded, he assured me of the strong disposition of the Emperor to cultivate the most friendly relations with the United States, and said he would see what could be done in relation to this matter, at the same time expressing a hope that it might be brought to a satisfactory conclusion.

He then asked me whether I thought there would be any change in our Tariff on Russian articles. To which I gave this answer, that after the extinguishment of the national debt which would be paid the next year, we must reduce many of our duties on imports, in order to limit our revenue to our expenditures. He congratulated me, that the finances of our country were in a better condition than those of any other nation;—after which I observed, that whether the duty on hemp were reduced or not, would probably make but little difference to Russia. That although we could raise the article equal to any in the world, our farmers had hitherto evinced an unwillingness to water-set it, and that until they would do so, we should continue to use Russia hemp, both for our Navy, and our Commercial Marine.

The Count then entered into conversation concerning the

proposed Treaty, relative to the Maritime rights of Neutrals. It had not been my intention to press this subject upon him, at our interview, believing the other to be of more importance at the present time; but his wish seemed to be different. He asked me what principles our Government believed it would be proper to embrace in such a Treaty. I replied, that as it would be a Treaty of great importance, and might, by it's example, have a powerful influence upon other nations, we desired it should be framed with much care, and contain such provisions only as could be defended before the world. That of course it ought to embrace the great principle so essential to the security of neutral Commerce, "that free ships make free goods," and also define what was a lawful blockade, and enumerate what articles were contraband of war. He then asked, "what will England say to that"? I replied that as it would be an arrangement solely between Russia and the United States for the regulation of their conduct towards each other, England would have no right to make any objection. He said that was very true. I told him we had Treaties of a similar character with several nations, and when in my enumeration of them, I came to Prussia, he interrupted me and asked whether we had such a Treaty with Prussia. I replied that such a Treaty had existed between us since a short time after the American Revolution, and had been recently confirmed; but it was ancient, and not so perfect in it's provisions as it might now be made. That if we should conclude a Treaty with Russia, it would probably be a model for future Treaties, between us and other nations. I wished therefore to understand the subject thoroughly, but had not been able to procure in St. Petersburg the proceedings and Treaties of the Armed Neutrality which I was anxious to examine. He promptly offered to lend me Marten's collection of Treaties containing them, which I accepted. I then observed that the policy of the United States and Russia had always been of the same liberal character in regard to the protection of neutral commerce, and that we had adopted in their fullest extent, so far as I understood them, the principles of the Armed Neutrality.

At the conclusion of our interview he requested me to reduce to writing the views which I had presented to him, in relation to the proposed negotiation, with which I promised to comply.

The next morning I transmitted him, according to promise, the Pamphlet Laws of the United States for 1831, containing our Commercial Treaty with Austria.

My note was sent to Count Nesselrode late on Tuesday evening last. The next morning I called on Baron Krudener, who immediately adverted to the interview between the Count and myself on the previous Friday, and informed me that my note and all the other papers, had been placed in his possession, and he was then engaged in preparing a report on the subject for the Emperor. He spoke with decided approbation of some of the arguments in favor of a Treaty of Commerce contained in the note, and said our Treaty with Austria was plain and easily understood. He then inquired whether we would be willing to afford security to their Commerce in the United States, (By which I understood him again to allude to the subject of deserters.) & I replied certainly so far as we could.

He seemed, in particular, to be fully sensible of the importance of a Treaty, with the view of encouraging American Vessels to engage in the trade of the Black Sea, and thereby enhancing the value of the Russian possessions in that quarter.

He informed me that Hemp and Iron in large quantities could be brought down the Don to Taganrog on the sea of Asoph, and sold cheaper than at St. Petersburg. (of this fact I was not aware, having only seen the list of exports from Odessa for the year 1830, prepared by our Consul there, and which is now in your possession.) He spoke of the rapid increase of our Tonnage, & hoped yet to see two hundred American Vessels employed in the trade of the Black Sea.

In speaking of the Treaty concerning Maritime rights, he said Russia felt but little interest in it. She had only a small commercial marine, and entertained no doubt but that her neutral rights would be respected by all Belligerents; yet as she had always professed and acted upon the principles contained in our projet, he saw no objection to embodying them in the form of a Treaty. I endeavoured to convince him they had a great interest in this question as well as ourselves; but shall not trouble you with a repetition of my observations. Should it become necessary, I will present them in writing to the Imperial Ministry.

He asked me if we desired to conclude the same Treaty on the subject as that proposed by Mr. Randolph. I replied substantially so, I might suggest some alterations; we wished to make it as perfect as possible. He then adverted to our Treaty with Sweden on the subject of neutral rights in terms of approbation.

Thus, sir, I have endeavored to furnish you a detailed view

of the existing state of the negotiation between Russia and the United States. I fear the perusal of it will prove as tedious to you, as it's preparation has been to me; and I can assure you, that nothing but the commands contained in my instructions would have induced me to trouble you with so long a paper. What the event may be I cannot say; though at present all things appear propitious. I hope much from my own conviction, that the more they reflect upon the subject, the better they will be satisfied, that our wishes accord with their own interests. At another time, I shall probably communicate some facts to the Department, for the purpose of exhibiting the estimation in which our trade ought to be held by this Country.

I heard yesterday from a source entitled to respect, that the British Ministry have determined upon a reduction of their duty on hemp from 4s. 6d. to 1d. pr. Cwt; and that a Bill for that purpose either has been or will be passed during the present Session of Parliament. What effect this measure, especially during it's pendency, may have upon our negotiations, I cannot anticipate. It is said Great Britain, at the present time, collects £300.000 sterling per annum for duties on hemp.

On the 25th Instant, I received an official note from Count Nesselrode, communicating the intelligence that the Cholera had ceased in every part of the Empire, and requesting me to transmit this information to the Government of the United States.

I shall expect to hear your opinion, as soon as possible, on the subject of the proviso annexed to the first article of our projet of the Treaty on Maritime Rights, concerning which I wrote to General Jackson, hastily and informally, on the 22d Instant.

With great respect I remain

Your Obedient Servant

JAMES BUCHANAN.

TO THE HONORABLE
EDWARD LIVINGSTON,
Secretary of State.

TO THE REV. EDWARD BUCHANAN.[1]

St. Petersburg 15–27 July 1832.

My dear Brother

I received yours of the 4th of June on the 10th Instant. It contains melancholy information. I trust each one of us may be able to say in relation to ourselves God's will be done! I fear there is but little hope for poor George. May his latter end be peace! God grant that he may recover!

Harriett's marriage must have been a gloomy ceremony. I hope however that joy may succeed to gloom & that her marriage may be happy. I fear that her husband's health is not good. I would thank you to make it a point to wish them happiness in my name. May they be united in spirit here & be heirs of glory hereafter!

From some unaccountable neglect either at the Department of State or the Legation in London I have received no newspapers from the United States since my arrival in this City except those which came in the vessels with your two letters of the 3d of May & 4th of June; & these letters are all I have received from our Country, except one from Mr. Reynolds of Lancaster. I have thus been entirely deprived of the pleasure of hearing any thing from my relations, but what you have communicated. I shall endeavor to correct this evil; but in the mean time it would be better to send letters intended for me to Mr. Crary or some other friend in New York who would enclose them to our Chargé in London (Mr. Vail). I presume no ship will leave America for St. Petersburg after you shall have received this letter, until early in the next Spring. I hope my friends in New York will not neglect to send me Newspapers by every such opportunity.

I cannot complain of my situation here, though it is not very agreeable. The Press is under so strict a censorship, that nothing is published except what the Government pleases. Every avenue through which liberal opinions might enter this empire is carefully closed; & in fact but few even of the higher classes of society know much of our country or its institutions. An American minister therefore to this Court enjoys but few of the advan-

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 144.

tages he would derive from the character of his country either in England or in France. Notwithstanding I have been treated very civilly, particularly by the Diplomatic Corps & the English, who are numerous here. We have an Episcopal church; of which a Mr. Law is the rector. He is said to be a good man & is a tolerably good preacher. I have heard him twice. The service of the *English* Church is very long; I think the retrenchments made in it by the Church in the United States have been very judicious. —There is also a Methodist church here, which I have not visited.

The higher classes among the Russians in St. Petersburg have I fear but little religion; & the common people are very ignorant & superstitious. Although the Greek differs from the Latin church in regard to *the use of images;* yet they cross themselves here, with much apparent devotion, before consecrated *pictures* which are put up every where throughout the City;—& in passing the churches. Among this class, there is no honesty. They will always cheat you if they can. To this rule I have not met with a single exception. Although I am far from believing that a puritanical observance of Sunday is required of us; yet I confess I have been shocked with its profanation in this Country. The Emperor & Empress who are models of correct moral deportment in other respects give their balls & grand fetes on Sunday evening; & I am confident it has never entered their thoughts that in this respect they were acting incorrectly.

My domestic arrangements are very comfortable. My house is excellent & very well furnished. It has the benefit of a fine view of the Neva, & a southern exposure which in this land of frost & snow is a great advantage. We have not yet had one day which could be called Summer. The weather has been both cool & damp, indeed the season has been more remarkable than any which the oldest inhabitants have ever experienced. In common seasons they have about six weeks of very warm weather. It is healthy & my health is good.

Mr. Clay and Mr. Barry are very agreeable young gentlemen. The latter desires to be remembered to you. The Mulattoe man I brought with me from the United States is a valuable servant. I know not what I should do without him.

Give my kindest love to George. I have written to him since my arrival here. Give my love to Mother, Jane, Maria, Harriett & all the family. I have not yet written to Maria. I shall do so soon. Should you be in New York on the receipt of this remem-

ber me to my friends there. Praying to God that we may meet again in health & prosperity in our native land I remain yr. affectionate brother

JAMES BUCHANAN.

MR. EDWARD Y. BUCHANAN.

TO JOHN B. STERIGERE.[1]

ST. PETERSBURG 2 August N. S. 1832.

MY DEAR SIR/

Here I am pleasantly situated in my own house which commands a delightful view of the Neva & all the vessels which enter this port. The City is magnificent & beautiful. The buildings both public & private have been constructed upon a grand scale:—but the people are ignorant & barbarous. With the exception of the merchants & a few others in the commercial cities there is no intermediate rank between the nobleman & the slave. The Serfs, however, are not unkindly treated. They are attached to the soil, & in general are not bound to labor for their masters more than three days in the week. Besides they are furnished with land which they cultivate for themselves.

No one can be here for a month without being fully convinced that these people are wholly unfit to take any share in the Government, & it is doubtless the policy of the Emperor & nobles to keep them in this state of ignorance. Throughout Germany the people have generally received the rudiments of education & are fit for free institutions; but here Despotism must yet prevail for a long time. How happy ought we to be in America! Would that we knew our own happiness! Coming abroad can teach an American no other lesson, but to love his country, its institutions & its laws better, much better than he did before.

The Emperor & Empress in their domestic relations are worthy of all praise. In this respect their example is excellent & I am inclined to believe it has had a favorable effect upon the conduct of their nobles. Still that is far from being of the best character.

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 146. Mr. Sterigere was a member of Congress from Pennsylvania from 1827 to 1831.

From my own observation & experience since I left home, I do not think a wise American ought to desire a foreign mission. For my own part I should greatly prefer a seat in the Senate to any mission which the Government could confer upon me. I trust however that I shall be instrumental during my sojourn here in benefiting my Country. If my labors in accomplishing the objects of my mission were closed I should be very desirous of returning home. But I shall remain as long as duty requires & endeavor to be content.

There has been great neglect in the Department of State or somewhere else in forwarding my letters & newspapers. I have not yet received a single newspaper except a few which were sent me by some friends direct from New York, & the two or three letters that have reached me refer me to the papers for political news. This being the case, I charge you by our mutual friendship to write to me often & give me all the news. Please to send your letters to Campbell P. White or some other friend in New York, not to the Department of State & direct them to the care of Aaron Vail Esquire, our Chargé in London. Perhaps it might be better to enclose them to him. He is a very good fellow & will be attentive in forwarding them. I was much pleased with him in London.

It seems Van Buren has been nominated by the Baltimore Convention:[1] but Pennsylvania has not yet yielded her pretensions in favor of Mr. Wilkins. I fervently hope that such a course will be pursued by our State as not to endanger its vote in favor of General Jackson.

I have been well treated since my arrival by the Diplomatic corps generally: but particularly so by Lord Heytesbury the English & the Duke of Treviso the French Ambassador, & by the Swedish & Hanoverian ministers. So far as regards my personal feelings I am very sorry that Lord H. has been replaced by Lord Durham. The latter does not promise to be so popular as the former.

I have not yet learned to submit patiently to the drudgery of etiquette. It is the most formal Court in Europe & *one must conform to its rules. Foreign ministers must drive a carriage* & four with a postilion—& have a servant behind decked out in a more gay dress than our militia Generals. This servant is called a chasseur & has in his chapeau a plume of feathers. To this

[1] As Vice-President.

plume as it passes the detachments of soldiers present arms, & individual soldiers take off their hats. How absurd all this appears to a Republican! It was with some degree of apprehension that I took a house on the north side of the river, although by far the best I could find; because no foreign minister had resided on this side before; but it has succeeded & since I have set the example I have no doubt it will be followed by others as it has many advantages over the opposite shore.—Let me hear how you are succeeding at the law? Be not discouraged. Persevere & with the blessing of Heaven your success is certain. Remember me kindly to Mr. Paulding, Mr. Patterson & all my other friends whom you may chance to meet. If you all think as often of me as I do of you, I shall be freshly remembered.

Ever your sincere friend

JAMES BUCHANAN.

JOHN B. STERIGERE ESQ.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 6.)

ST. PETERSBURG, 9. August. N. S. 1832.

SIR

At the date of my last Despatch, I anticipated that ere this, I should have received an answer from Count Nesselrode to my communication of the 26th of June. The daily expectation of this event, for the last two or three weeks, has prevented me from addressing you sooner. I shall wait for it no longer; but proceed to inform you of everything of any importance which has transpired, since the date of my last Despatch, in relation to the proposed negotiation.

On the 5th July, I received a number of the New York American, by a vessel direct from that City, containing the Tariff Bill, which had been reported by the Secretary of the Treasury to the House of Representatives, on the 27th of April. I immediately addressed a note to Baron Krudener, informing him of the reduction of duties which had been proposed by the Secretary, on the articles of hemp, sail duck and hammered iron, and the drawback which he had recommended on American Ton-

[1] MSS. Department of State.

nage, in consideration of the duties imposed on the several articles used in the construction of our ships. This note contained no opinion of my own, either as to the policy or the probable success of the proposed Bill.

The Baron called on me the next day and expressed, in strong terms, his approbation of this measure, and the happy influence it would have on the trade between the two Countries. He said, he had immediately delivered my note to Count Nesselrode, who was much pleased with the information it contained. He also informed me, that the Count, on that very day, had gone to Peterhoff to submit the subject of the proposed Treaty to the Emperor.

I called upon the Baron on the 10th, who had just received a letter from Mr. Krehmer [1] which was lying on the table. He said that Despatches had also arrived at the Foreign Office from Baron Sacken; [2] but he had not yet seen them.

It is my opinion, either that letter, or these Despatches, or both communicated information displeasing to this Government, which is extremely jealous. What it could have been, I shall not pretend to conjecture. The Washington Newspapers, should I ever receive any, may possibly cast some light upon the subject.

This impression was made upon me not only by the subjects and tone of the Baron's conversation upon that occasion; but by his omission to visit me for nearly two weeks after, in direct opposition to his usual practice; and when he did call, he appeared studiously to avoid every allusion to the proposed negotiation.

On the 22d ultimo, he dined with me. After we had risen from table, he introduced the subject, and informed me that our proposition to conclude a Commercial Treaty had been referred by the Emperor to Count Cancrene the Minister of Finance. Upon expressing some surprise at this information, he asked me if we did not consult our Secretary of the Treasury on similar occasions. I said, "then the subject has been before the Emperor," and he replied "yes, certainly."

He observed that in concluding a Treaty, it would be necessary to provide for all the relations which might probably occur between the two Countries. He then referred to the "Droit d'Aubaine," and related a case in which the State of Tennessee had enforced this right in favor of some college, against the

[1] Russian secretary of legation at Washington.

[2] Russian chargé d'affaires ad interim at Washington, August 16, 1830–February 20, 1833.

effects of a Russian subject, and had thereby deprived his lawful heirs of their property. I told him I had not heard of this case before, and expressed my surprise that such a law still existed in any State of the Union.

He afterwards suggested a doubt, whether the General Government possessed the power of providing for such cases by Treaty. I assured him there could be no doubt of their power in regard to future cases, and that it had been often exercised in our Treaties with other Nations.

I am inclined to believe, the case to which he referred must have been that of an alien, who had purchased and held real estate in Tennessee, contrary to law; and not that of the succession to personal goods. But I have no doubt I shall hear more of this subject.

In the course of our conversation, I repeated to him my strong conviction, that the trade between the two Countries was more beneficial to Russia than the United States; and he replied that we ought not to enter into such considerations, but arrange everything for the benefit of both nations.

Before his departure he informed me, he would leave St. Petersburg for the United States as soon as he could obtain his audience of leave from the Emperor.

On the first Instant, I called upon Count Nesselrode in pursuance of a previous appointment, and found Baron Krudener there.

The occasion of this visit was the delay and difficulty I had experienced, in obtaining some Newspapers which had been sent to me by friends direct from New York. Instead of delivering them to our Vice-Consul at Cronstadt; in which case I should have received them immediately, they were retained as merchandize and sent up to the Custom House in this City in a lighter, with the other lading of the vessel. The consequence was, that I did not receive them, until nearly a week after their arrival. I had previously mentioned this grievance to Baron Krudener.

The moment I introduced the subject, Count Nesselrode interrupted me and said, that Baron Krudener had informed him of the delay I had experienced in obtaining my Newspapers, and he had already caused orders to be given that such packages should be delivered to our Vice-Consul at Cronstadt, immediately after their arrival. I suggested that my friends in New York, ignorant of the laws of Russia, would probably sometimes enclose

letters in their packages, and that therefore these packages might be opened, and the Vice-Consul would pay the established postage on any letters which they contained. He promptly replied, that was not necessary; such packages, whether they contained letters or not, should be immediately delivered to the Vice-Consul without being opened.—No mean privilege in this Country.

After some other conversation, the Count referred to the proposed Treaty of Commerce. He informed me that my proposition had been submitted to the Emperor who was pleased with it, and had directed it to be referred to the Minister of Finance; but that he had not yet made his report. As soon as he did, the Count said, I should hear from him on the subject.

He then informed me, that he had lately received Despatches from Washington which contained information relating to the progress of the Tariff Bill. Here Baron Krudener became the speaker, and said that another member of Congress, whose name he did not recollect, had offered an amendment to the Bill reported by Mr. Adams, (which bye the bye I have never yet seen) less favorable than it was to Russian interests, and asked me if I had received such information. Upon my answer in the negative, the Count offered to have a copy of this part of the Despatch made for me, and to transmit it to me immediately. I thanked him for his kindness, and said I should be very glad to receive it.

He now returned to the subject of the Treaty, and said it would have great weight with the Minister of Finance, should he hear that a Tariff favorable to Russia had been established by the United States; and then asked me what prospect there was of the passage of such a measure. I replied, that our Tariff must be altered in such a manner as to reduce our revenue to our expenditure; but what would be the precise changes Congress might think proper to make, I could not undertake to conjecture. That the Bill which had been recommended by the Secretary of the Treasury, and afterwards, without any material change, reported by Mr. Adams as Chairman of the Committee of Manufactures, certainly had high authority in it's favor. That whether all the provisions which favored Russian productions should be adopted or not, I thought it highly probable that the one which I deemed the most important for them,—the drawback of duty upon American tonnage,—would be retained. That I had arrived at this conclusion, because many who believed it to be proper to encourage the domestic production of hemp and iron for internal consumption by retaining the present duties, might, nevertheless,

consent to allow the proposed drawback in favor of our navigation, which had to contend against that of other nations.

I shall not attempt to detail all our conversation. In the course of it, I informed him that under our existing laws, Russia already had a virtual preference over England, in regard to the article of iron; because the duty on hammered was not much greater than half that on rolled iron, although the former article was considerably more valuable than the latter. I also observed that we wished to conclude this Treaty, more from a desire to be on the best terms with Russia, than from a conviction that we should derive any very great benefits from the Trade. That whilst it would merely employ our Navigation, an interest which I certainly did not mean to disparage, Russia would enjoy nearly all it's other advantages.

After this remark, the Baron expressed an opinion, that if our duties on Russian articles should be reduced, it would greatly increase the trade; and that we could obtain hemp in the Black Sea cheaper than at St. Petersburg. I told him this was a fact of which I had not been aware, until he had communicated it to me on a former occasion. The Count said the Baron was mistaken, that hemp was not produced in the Southern, but in the Northern provinces of the Empire. He replied, that it was brought down the Don to Taganrock, and from thence transported to Odessa. I then observed that I believed but little, if any, had been exported from that city, I did not know what might be the case hereafter. The trade with the Black Sea would be an experiment for our Merchants; but I felt confident they would try it, if a Treaty satisfactory to both parties could be concluded. Baron Krudener replied, that as soon as the Minister of Finance should report on what basis he thought a Commercial Treaty ought to be concluded, Count Nesselrode would commence the correspondence with me.

I asked the Count if they produced much wool for exportation on the borders of the Black Sea. He answered yes, in great abundance. He would sell us wool himself; he had an estate there with 20.000 Merino Sheep upon it. I remarked that I had heard much of Count Nesselrode, but never before knew he was a wool grower.

Baron Krudener mentioned that some twenty or thirty years ago, Spanish Sheep had been introduced into the Crimea, that they had prospered astonishingly and produced wool of the finest quality.

The Count afterwards informed me, that by the last post from Constantinople he had received a Despatch from their Ambassador, communicating the information that the ratifications of our Treaty with the Sultan had been finally exchanged; and that the American Government had fully approved the conduct of Commodore Porter in relation to this subject.

We had much conversation concerning Don Pedro's expedition and other topicks of the day; when I took my departure. Baron Krudener followed me for the purpose of saying, that on that day he would bring me a copy of the Despatch from Baron Sacken.

The Baron called a few hours after and presented me, not a copy of the Despatch from Baron Sacken which they had promised, but a copy of that from Constantinople. He said the former was then with the Emperor, and could not be procured that day. I have heard nothing of it since.

I asked him when he expected to reach Washington. He said he need be in no hurry, he would visit London and Paris on his way, he did not expect to arrive there much before the Meeting of Congress, & when he got there he would have little or nothing to do, as the negotiations would be conducted here between Count Nesselrode and myself. At this interview he seemed to take it for granted that a Treaty of Commerce would be concluded. I stated to him that if the Russian Government had determined to make a Treaty, the sooner it should be concluded the better, so that the information might reach the United States in time to enable our merchants to prepare for the trade of the next Season, in the Black Sea. To which he replied, that he had already urged upon Count Nesselrode the importance of expediting the business, with a view to that trade, for the next Season.

He then left me, and I have since had no conversation with him on the subject.

From a review of all that has occurred since my arrival, I do not expect an answer to my communication of the 26th of June, until after this Government shall learn the fate of the Tariff. If the Bill reported by Mr. Adams has become a law, without any essential change in the duties proposed on Russian productions, it is my impression we shall obtain a Treaty without much difficulty. On the contrary, if the Tariff on these Articles still remains unchanged, I cannot anticipate what may be the consequence. It is not improbable, they may then propose to treat,

on condition that we shall reduce our duties on iron, hemp and sail duck. In that event, I shall have no difficulty in giving them an answer. I cannot conceive any policy more pernicious, than to bind ourselves by Treaty to a foreign nation, in such a manner, as to prevent Congress from freely legislating, at all times, upon the great interests of the nation, entrusted to their care by the Constitution. Besides, my instructions would not authorize me to entertain any such proposition.

In either event, I am not without hopes, that I shall eventually conclude a Treaty. They are founded *solely* upon the interests of this Country. Our trade is of great importance to these people, and they will do every thing they can to maintain and extend it. I have succeeded in directing their attention to the subject, and the more they consider it the brighter will become our prospect of success. Nothing but a deep and prevailing sense of their own interest can overcome the prejudices they entertain against Commercial Treaties.

I feel satisfied we have but little to expect from the kindly feelings of the present Emperor and his Ministers, towards our Country. The Emperor Alexander was probably partial to the United States. Until within a few years of the termination of his reign, he affected popularity, and no doubt entertained some liberal political feelings. Towards it's conclusion, however, events had changed his sentiments, and he died superstitious in his religion, and ultra-illiberal in his politicks.

The present Emperor, especially in his private character, possesses some great and good qualities; but I am much mistaken, if it has not been, and will not continue to be a chief object of his reign, to retard the march of civilization and arrest the progress of free institutions throughout Europe. Such is the horror with which he regards the introduction of liberal principles into his Empire, that the Nobility are prohibited from sending their children abroad to be educated, and it is forbidden to an officer of the army even to ask leave to travel in foreign Countries. It is impossible that whilst he continues to be animated by such feelings, he can regard that Country with much favor, which, thank God! has been the beacon-light of liberty to all the Nations.

In making these remarks, it has been far from my purpose to excite unfriendly feelings between the two Countries. They are intended merely to remove any impression which may exist at Washington, that Russia entertains a very kind feeling for the

United States. That the Emperor dislikes us less than he does either France or England, I can readily believe; although his policy, at the present moment, requires, that he should treat both these Nations, and particularly the latter, with great respect.

Lord Durham is now in this City on a special Mission from England. One might suppose from reading the Newspapers of that Country, that the chief object of his Mission was to interfere in behalf of the suffering Poles. I have good reason to believe this is not the fact. England and France have abandoned that gallant nation to her fate; but even if they were, at this late day, to interpose in her favor, all their efforts would be vain. The Emperor will cling to Poland with the grasp of death, and treat it as a conquered nation, in despite of all their remonstrances.

The Belgium question has, without doubt, been the principal object of Lord Durham's mission. If he expected to prevail upon the Emperor to take a part in coercing the King of the Netherlands, to abide by the decision of the Conference at London, he has been disappointed. I understand from authority which I consider good, that he has been politely informed that the Emperor cannot interfere forcibly, that if he did, the whole Empire would exclaim against the act, on account of his Sister—the wife of the Prince of Orange, and that if compulsion should become necessary, it must be left to the other Powers. The meaning of this language is, that he is determined to leave himself at liberty, and be governed in his future conduct by circumstances, as they may occur.

The Emperor is an excellent politician. Although I have the best reason for believing, that the removal of Lord Heytesbury, and the appointment of Lord Durham, were both disagreeable to him; and he was enraged, at the epithets which had been applied to him in the House of Commons in relation to his conduct towards the Poles, yet Lord Durham was received and has been treated in a distinguished, nay even an unprecedented manner. This is the more remarkable, as he came here, not as Ambassador, but merely as Envoy Extraordinary on a special Mission, charged with the affairs of the Embassy. Whether they will succeed in throwing dust in his eyes and making him lose sight of the interest of his Country, time must determine. They have certainly made a desperate effort for that purpose.

You may ask, why such efforts? Because it is the interest of the Emperor, for the present, to be permitted to retain Poland,

and at the same time to keep the peace of Europe. There are several reasons why this should be his policy.

A war is already waging by the Holy Alliance against liberal principles much more formidable than if they had arms in their hands. If they should succeed in enforcing the infamous edicts of the Germanic Diet, and in subduing the free spirit which now prevails in many parts of Germany, then there will be nothing on the Continent of Europe to resist their power. France will afterwards fall a sacrifice, and the elder branch of the House of Bourbon be restored to the Throne.

Besides, the Emperor has already had four wars during his short reign; and in the last one with Poland he suffered prodigiously. Indeed it required the whole force of his Empire to subdue this gallant Nation. Before it was effected, the Nobles had already begun to murmur. The chief strength of Russia is in her ancient provinces, where but two classes exist—the Nobles and their Serfs, and *there* whenever the Government take a soldier, they must deprive some master of his slave. These drafts had become so heavy, as to produce that muttering of discontent which in a Despotic Government often precedes a convulsion. The Emperor is not yet prepared for a new war.

In estimating the probable permanence of the existing state of things in Russia, one circumstance ought to be taken into the account, the importance of which is neither much known nor regarded abroad. The Nobles, in 1812, made prodigious exertions to repel the invasion of Bonaparte, and thereby greatly embarrassed themselves. The Emperor Alexander to relieve them, loaned them the money of the crown and took mortgages upon their estates. The consequence is, that at the present moment, a considerable proportion, probably a great majority of the nobility are largely the debtors of the Emperor. From the extravagance of their habits, it is not probable that these debts will soon be paid. In many instances it requires nearly their whole income, to keep down the interest.

What a temptation for revolution! But such a revolution would only be a change of Masters. It would not improve the condition of the mass of the people. They are utterly unfit for liberal institutions. The Nobles, with but few exceptions, have acquired all the vices of French civilization in it's highest state without any of it's redeeming qualities, except politeness; & the people who are mere serfs upon their estates are barbarous, superstitious and ignorant. In their present condition the Govern-

ment of the Emperor Nicolas would be the best they could enjoy, if it were not his policy to perpetuate the reign of ignorance and superstition for the purpose of preventing forever the introduction of liberal principles into his Empire. He, however, holds the sceptre with a vigorous hand and a circumstance which under a weak prince might produce a revolution, may never shake his power.

In case I should succeed in making a Treaty with this Government, concerning Neutral rights, a fair prospect would then be presented of concluding similar Treaties, in this city, with the Ministers of Austria and Prussia. If it even should be necessary to proceed to Berlin to treat with the latter, it would be so much the more agreeable to me, provided my expenses are allowed. I therefore take the liberty of suggesting to the President, whether as we have no accredited minister either at Vienna or Berlin, it might not be proper to transmit me powers to conclude such Treaties with these Governments, to be used in the event of my success with Russia. That circumstance I am persuaded would remove every obstacle, if any such exists, to our success with the other two Powers.

I observe that our late Treaty with Prussia looks to future negotiation on the subject of Neutral Commerce and Navigation: and some changes are certainly necessary in the provisions of the ancient Treaty.

Yours very respectfully

JAMES BUCHANAN.

TO THE HONORABLE
EDWARD LIVINGSTON
Secretary of State.

TO THE REV. EDWARD BUCHANAN.[1]

ST. PETERSBURG 13 September 1832.

DEAR BROTHER

I received your very agreeable letter of the 16th July on the 4 September. I was very anxious indeed to hear from poor George & regret to learn, that which I have for some time apprehended, that we can indulge but little hope of his final recov-

[1] Buchanan Papers, Historical Society of Pennsylvania. Partly printed in Curtis's Buchanan, I 147.

ery. Still it is a great satisfaction to know that he does not feel alarmed at the prospect of death. I trust his philosophy may be of the genuine christian character & that he may have disarmed death of its sting by saving faith in the Redeemer of mankind.—Still hope will linger & is unwilling to abandon us when so near & dear a relative is the object.

I congratulate you upon your admission to the ministry & trust that you may be an instrument in doing much good to your fellow men. I cannot say I am much pleased with your intention to settle at Meadville. It is a remote place & does not present an extensive theatre either for usefulness or improvement. Besides I felt a strong desire as you know that you should not immediately take charge of a congregation. Still I shall never interfere with your determinations. You are now a man & I trust & believe a christian & will be governed by your duty as well as your interest. "Be wise as the serpent but harmless as the dove" in all your conduct: and may Heaven bless you with happiness & prosperity throughout the journey of life. Be prudent, be circumspect & weigh well the probable consequences of all your important determinations before you arrive at a final decision.

The last advices from America have brought us most distressing news concerning the progress of the cholera. We have heard that it was subsiding in New York but that it was making great ravages in Philadelphia. God grant that it may not have extended into the interior of Pennsylvania. I am now very anxious for news from America & expect it by the next Steam Boat in a few days. There have been a few cases of cholera in St. Petersburg during the present season. As the newspapers here publish nothing upon the subject & there are no reports from the police made public there has been scarcely any alarm. Indeed I suppose that a large majority of the people know nothing of its existence. Dr. Le Fevre the physician of the British Embassy told me to day that in the course of his practice which is very extensive he had met no case for the last two weeks. Those places in Europe which have suffered from the disease one year generally have experienced a slight return of it the next.

I think this climate will be favorable to my health, at least in regard to the bilious complaints with which of late years I have been so much afflicted.

My life glides on smoothly here. The place is becoming more agreeable to me as my acquaintance extends; yet I still feel

like a stranger in a strange land. I have so far mastered the French language as to [be] able to read & understand it without much difficulty. It will be some time however before I shall speak it fluently.

The Diplomatic corps yesterday attended a Te Deum at the Church of St. Alexander Nevsky. It was the day of that Saint, who is the greatest in the Russian Calendar. The service was very magnificent & imposing; though the tones of an organ would have made it grander. These are not used in the Greek churches. The Emperor was there & appeared to be very devout. He often crossed himself, & in one part of the ceremony kissed the hand of the Archbishop. Think of the proudest & most powerful potentate on earth *still continuing* to do so much reverence to the clergy! Among other miracles this Saint it is said rode up the Neva on a Grindstone. After the service had concluded in the church, we were present at the erection of a granite column to the memory of the late Emperor Alexander—the largest & heaviest which has ever been erected, it is said, in ancient or modern times. There were 2000 men & an immense quantity of machinery employed.—I say again rely upon the divine blessing & your own judgment in all things & I shall be content; but let it be taken coolly & not under the influence of the idle talk of others. Settle in no place merely for the sake of a settlement. You shall not be at any loss for money. Give my love to mother & all the family & believe me to be ever your affectionate brother

JAMES BUCHANAN.

THE REV: EDWARD Y. BUCHANAN.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 7.)

ST. PETERSBURG, 2–14 September 1832.

SIR,

I regret to inform you that I have not yet received an answer from Count Nesselrode to my note of the 26th June last: and you will perceive from the sequel, that no answer can now be expected in less than a month.

[1] MSS. Department of State.

I have already furnished you more than you may have thought necessary of the conversations between Baron Krudener and myself, concerning the proposed Commercial Treaty. I shall now merely advert to one that occurred on the 12th of August, a few days before his departure, at the house of a mutual friend, in which he spoke with much confidence of the conclusion of such a Treaty, after having informed me that he had seen the Emperor on the Sunday previous to whom he had then communicated his views of the subject. I expressed my regret that he would not remain in St. Petersburg and take a part in the negotiation: to which he replied that no such desire had been intimated by Count Nesselrode, and he did not wish to intrude himself into the business unsolicited.

As I have reason to believe his communications upon this occasion, particularly in regard to what occurred at his interview with the Emperor, were intended to be confidential; you will of course never suffer any allusion to them to be made public.

On the 19th August, Mr. Stevenson, a gentleman of Boston now in this City, received and communicated to me the slip of a New York Newspaper of the 16th July, containing the Tariff Bill as it had passed both Houses of Congress, but without the signature of the President. On the next day I addressed a note to Count Nesselrode of which the following is a Copy.

(No. 7) (Mr. Buchanan to Count Nesselrode)

Mr. Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, believing it would be agreeable to His Excellency Count Nesselrode to learn the fate of the Tariff Bill which has been pending before the Congress of the United States, has now the honour to inform him that it has finally passed both Houses.

The changes which have been made in the Tariff upon articles in which Russia is chiefly interested are as follows, to wit,

The duty on hammered iron has been reduced from $22.40. to $18. per ton: that on hemp from $60. to $40. per ton: and that on Sail Duck from 12½ cents per square yard to only 15 per cent ad valorem.

The reduction of duty on this latter article has been very great; and far beyond what was contemplated either in the Bill reported by the Secretary of the Treasury, or Mr. Adams.

When the vessel which brought a copy of the Bill from the United States left New York on the 16. July last. N. S. they had not received information that it had been approved by the President: but that it has been, is beyond all doubt.

Mr. Buchanan seizes this occasion to renew to His Excellency the Vice-Chancellor the assurance of his most distinguished Consideration.

St. Petersburg, August 8–20 1832.

To which he answered as follows

(No. 10.) (Count Nesselrode to Mr. Buchanan)

Le Vice Chancelier a eu l'honneur de recevoir la Note que Monsieur Buchanan, Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats Unis d'Amérique lui a adressée, et par laquelle il a bien voulu l'informer de la sanction que le Congrès a donnée au nouveau tarif, et des dispositions, que renferme cet acte, concernant la diminution des droits sur quelques articles du commerce de la Russie.

Le Vice Chancelier prie Monsieur Buchanan d'Agreer tous ses remercimens pour l'empressement avec lequel il a bien voulu lui faire cette communication, et il saisit cette occasion de lui renouveler l'assurance de sa considération très-distinguée.

St. Petersbourg, le 15. Août. 1832.

Two months and a half having expired without receiving any answer to my note of the 26th June, I felt it to be my duty again to introduce the subject of it to Count Nesselrode's notice; and I obtained an interview with him to day for that purpose.

In a very short time after my entrance, he informed me that the Emperor had left the City, and would not return until about the first of October; and that he himself intended to leave St. Petersburg tomorrow, on a visit to his daughter and should be absent for two or three weeks. He no doubt mentioned these circumstances as an apology in advance for still longer delay.

I told him I had solicited this interview for the purpose of informing him, that the next Session of Congress would commence in about eighty days, and the President would be anxious to communicate to that Body, in his annual Message, the determination of the Imperial Government, concerning the Treaty of Commerce. That this was the more to be desired, as Congress, during their next Session, might be still further occupied in adapting our laws to the new condition in which the Country would find itself placed, upon the extinguishment of the public debt. I added, that if it were determined to conclude such a Treaty, the postponement of it's execution until so late a period of the year, that our merchants could not obtain information of it's existence in the course of the present Autumn or early in the next Winter, would delay for the period of a whole year any favorable impulse which it might give to our Commerce in the Black Sea. That they must make their arrangements in the Fall, or early in the Winter for the trade of the succeeding season.

The Count replied, that the papers had some time since been submitted to the Minister of Finance to whom the subject properly belonged; and he had not yet made his report. That he

would now press him; and he expected to be able to give me a definitive answer in October. I asked him at what time in that month, and he said he hoped in the beginning. (Old style of course.) He then observed that it required about forty days, he believed, for news to reach the United States from St. Petersburg. I replied that at this season of the year, no calculation could be made, with any degree of certainty, on less than fifty days. He said if our merchants got the intelligence in December, he supposed they would still have sufficient time to prepare for the next year's trade in the Black Sea. I answered, probably they might.

I then informed him that there was a gentleman who would sail tomorrow from Cronstadt for the United States;—that this would afford me an excellent opportunity of sending Despatches; and that I should inform the President I might certainly expect an answer in the beginning of October. He assented, and offered me a Courier's passport for the Bearer of the Despatches. I thanked him for his kindness, but observed it was not necessary to give him the trouble of having one prepared.

Before I took my leave, I expressed a hope that he would not consider I had been guilty of any importunity;—that the American Government were necessarily anxious to know what might be the determination of the Imperial Government on the propositions which had been submitted by Mr. Randolph. He assured me that he entertained no such idea: and we then parted.

What the character of this answer will be is still uncertain. I do not now indulge in any very confident expectations of success. It is true, that judging from all which has transpired, one might be induced to believe with considerable certainty that the Treaty would be concluded; & yet I entertain some apprehensions. I shall not at present trouble you with the reasons for my doubts.

Lord Durham left this City yesterday in an Imperial Steam Boat for Stettin. No Minister of any rank has ever received such attentions from the present Emperor as he has done. They were of a character so marked as to become the subject of general conversation. As it is well known that the Emperor entertains but little affection for England, & still less for the party now in power; it has been supposed that he had some great political purpose to accomplish. What that may have been is a subject of much conjecture. I am convinced his chief objects are

to preserve the peace of Europe for the present, & Poland forever; and to detach England as much as possible from France.

It is I believe certain, that when his Lordship introduced the subject of Poland to the Emperor he was informed that question had already been definitively settled,—& that he has done nothing for the unfortunate Poles. He has said however that he carries away with him such assurances from this Government as must bring the final settlement of the Belgium question to a speedy conclusion.

Upon the whole, without repeating to you the idle conjectures & still more idle gossip of this City, I am inclined to believe, that it is as probable that the ministry of Earl Grey may be influenced by Russian politicks through the agency of Lord Durham his son-in-law, as that the Emperor will change his course of policy in consequence of the representations of the English Cabinet.

Permit me to embrace this opportunity of performing an act of justice to Mr. Gibson our Consul in this City. He has furnished me with much valuable information concerning the commerce carried on between Russia & the United States; a subject with which his long experience has made him thoroughly acquainted. So far as I have had an opportunity of judging, he is a faithful & excellent Officer in whose integrity all confidence may be reposed. As he is not personally interested in any commercial business, he can devote his whole time to the discharge of his Official duties; & he is not even suspected of the least partiality in their performance.

Yours very respectfully

JAMES BUCHANAN.

TO THE HONORABLE,
EDWARD LIVINGSTON
Secretary of State.

P. S. 9/21 September 1832. I should have had to send a special messenger to Cronstadt with the foregoing despatch to have embraced the opportunity to which I have alluded, & I did not think it contained matter of sufficient importance to justify the trouble and expense, especially as I knew that other opportunities would soon offer.

TO GENERAL JACKSON.[1]

St. Petersburg, October 1–13, 1832.

Dear General:—

I avail myself of the present opportunity of writing to you with the more eagerness, as I know not when I shall again enjoy that pleasure. The last steamboat for the season will leave here in about a fortnight, and after that period no safe opportunity may soon offer. To put my letters in the post-office here would be most certainly to expose them to the Russian government; indeed they scarcely think it necessary to do up the seals decently of those which I receive.

Both the emperor and Count Nesselrode have returned to the capital. I may therefore expect a final answer to our propositions in a few days. I dined with the count yesterday, who treated me with marked attention. I suppose he thought it incumbent on him to do so, as it was the first time he had invited me. The dinner was given to the French ambassador, the Duke of Treviso, who leaves here to-day in the steamboat on leave of absence. Whether he will ever return is, I think, doubtful. I do not express this opinion, because I believe there is danger of immediate hostilities between the two countries; on the contrary, I am satisfied they will remain at peace whilst Louis Philippe shall continue on the throne and pursue his present course of policy. How long the present state of things may last in France is the question. I think you may rest satisfied that Russia will not go to war for the King of Holland. She will suffer France and England to carry into effect the decrees of the London conference against him. This, however, will cause much irritation here and in Prussia. Indeed, from my intercourse with the Russian nobility, I believe a war with France to preserve Belgium for the King of Holland would be highly popular. The emperor, however, has, I am almost confident, determined it shall not be for the present. This is wise, for I am persuaded that Russia has not yet sufficiently recovered from the four wars which she has sustained since the accession of the present emperor, to enable her to be as formidable and efficient as the world believes her. As long, therefore, as things remain as they are in France, there will not be war. An attempt on her part to interfere forcibly with either Germany or Poland would instantly change the aspect of affairs.

[1] Jackson MSS., Library of Congress; Curtis's Buchanan, I. 149

News of the death of King Ferdinand of Spain arrived here a few days ago, but has since been contradicted. In the mean time it produced a great sensation. It is considered that his death without a son must necessarily produce a civil war in that ill-fated country, and perhaps make the rest of Europe parties. His imprudent abolition of the Salique Law in favor of his daughter, it is thought, will not be submitted to by Don Carlos, in favor of whose succession the whole of the Apostolical party will be found ranged. The government here ardently desires the defeat of Don Pedro. Indeed any change in Europe in favor of liberal principles would be disagreeable to them, and they even occasionally publish ill-natured articles concerning the United States. This you will perceive from the last St. Petersburg *Journal*, a file of which I shall send by Mr. Mitchell, for whom I have obtained a courier's passport. The articles contained in newspapers here have the more meaning, as the press is under a most rigid censorship. I am well acquainted, however, with the chief censor, Count Laval, who is one of those noblemen who have been the most polite to me, and I shall take some opportunity of conversing with him on this subject.

England is, I think, fast losing her consideration on the Continent. The present ministry are not believed to possess much ability, at least for conducting foreign affairs; and they have so many embarrassing domestic questions on their hands independently of the national debt, that they cannot without the most urgent necessity involve the country in a war. They have negotiated and paid for making Belgium a virtual province of France —Greece of Russia; and, I think, they are in a fair way of losing their commercial advantages in Portugal by an affected neutrality between the hopeful brothers of the house of Braganza, for which they receive no credit, at least in this country. Although Lord Durham was treated with the most distinguished attention by the emperor, he received almost none from the nobility; and they indulge in a bitterness of remark both against him and his country which shows what are their feelings towards England. Besides, he was an eccentric nobleman, and is the subject of as many ridiculous stories as my predecessor. I am sincerely glad that he has in some degree taken the place of the latter in the gossip of this city. But this is a subject to which I would not advert in writing to any other person. They have no free press here; but they make up for the want of it in private scandal in relation to all subjects on which they can talk with

safety. The present British minister, Mr. Bligh, is a plain, agreeable, and unassuming gentleman, with whom my relations are of the most friendly character.

Within the last six weeks I have had the good fortune to make the acquaintance of several noble families of the very highest rank, and I am beginning to receive many attentions from that class. Their coldness and jealousy towards strangers generally are fast disappearing in relation to myself. Some accidental circumstances which it would be useless to detail have contributed much to this result. I consider this a fortunate circumstance, as the nobility exercise great influence in this country. I think in my despatch of the 9th of August last I spoke rather too harshly of them as a class; and although, with a few exceptions, I by no means admire them, yet this shows how dangerous it is to form opinions too hastily. The influence of the example of the present emperor and empress, in the correctness of their private deportment, is doing their nobility much good.

Too much care cannot be taken in selecting a minister for this court. Indeed it would be difficult to find many suitable persons in our country for this mission. In London and in Paris, our ministers enjoy the consideration to which they are entitled from the exalted character of their country; but here the character of the country must depend in a considerable degree upon that of the minister. The principles of the American Government, the connection between our greatness and prosperity as a nation, and the freedom of our institutions, are a sealed book in regard to the Russians. Their own press dare publish nothing upon the subject, and all foreign papers, unless those of the most illiberal character, are prohibited. The higher classes here must in a great degree receive their information concerning our country from our minister. This sufficiently points out what ought to be his qualifications, and I regret my own deficiency in some important particulars. Great talents are by no means so requisite as an easy address, insinuating manners, and a perfect knowledge of the French language. (In the latter I have already made considerable advances.) Above all he ought to have a genuine American heart, in which I know I am not deficient, always anxious to seize every favorable opportunity, and many such occur, of making an impression in favor of his country. There is one great disadvantage, however, under which a minister here labors; and that is, the total inadequacy of the salary. These people are fond of extravagance and show, and have not the least taste for Republi-

can simplicity and economy. In order that a minister may hold a high place in their esteem, he must be able to return their civilities. They judge much by appearances. The want of this reciprocity will be attributed to the meanness of the minister or that of his country, or both. Even the representative of his Sardinian Majesty receives $16,000 per annum. Now if I had $100,000 per annum, I would not pursue any course of conduct in this respect which I should be ashamed to exhibit to my countrymen; but surely if they were aware that their minister could not return with Republican simplicity and dignity the civilities which he cannot avoid receiving without giving offence, they would consent to an increase of salary. I think $15,000 would be sufficient for the purpose *without the outfit*. Perhaps it would be better to fix it at $13,000, with the expense of a furnished house. At all events, I must give some large dinners.

I make these remarks without feeling the slightest personal interest in them, because nothing short of your express commands would induce me to remain here longer than two years from the time of my arrival; and I trust something may occur to justify my return to my native land within a shorter period. I feel, however, if I had such a salary I could leave a much more favorable impression of my country behind me. By the bye, I do not know yet what I am to receive; if I should have to lose the exchange between this and Amsterdam at its present rate, my salary will but little exceed $8,000. If ever a change shall be made the salary of the minister here ought to be fixed in silver roubles.

I have lately seen much of Mr. Politica, who is still attached to the Foreign Office. His feelings towards our country appear to be very friendly. From his conversation, I have reason to anticipate a favorable issue to our negotiations; but I shall not allow myself to confide much in unofficial conversations. I have no doubt that they feel it would be their interest to negotiate with us; and they appreciate highly the advantages of our trade; yet they entertain such strong prejudices against commercial treaties, and there are so many wheels within wheels in the complex system of their policy that it is safest not to expect a treaty with too much confidence. I have no doubt, should they conclude one with us, England would insist upon being placed on the same footing. Besides, Count Cancrene, the Minister of Finance, is understood to be opposed to all commercial treaties.

I ought to state that I believe the omission to invite Mr.

Barry to the reviews was unintentional, and Count Nesselrode expressed his sorrow to Baron Krudener for the neglect before the latter left this city.

I shall soon be looking with great anxiety for news concerning our elections. I read your veto message with very great pleasure. Although rather inclined to be friendly to the re-charter of the Bank of the United States, yet I am now free to say, I should vote for no bill for that purpose liable to the objections of that which passed both Houses of Congress. I am glad to observe the spirit which seems to animate the Republican party of Pennsylvania, in relation to this subject. I entertain no apprehension concerning the result of your election; but I wish to see you come into office for a second period with that triumphant majority which you are entitled to receive, both from the wisdom and success of your foreign and domestic policy. I cannot think that the unnatural union between the Clay men and the Anti-masons will reduce your majority; as I believe the mass of both these parties is honest and cannot approve such a political partnership.

Pardon me for not taking the trouble of correcting and re-writing this long and rambling letter. I should do so did I not know it was only intended for friendly eyes. I now receive my newspapers with tolerable regularity, through the kindness of my friends in Hamburg and Lubeck. This regulation will cease at the close of the present month, when the steamboats will be discontinued. Please to present my best respects to the members of your Cabinet. I have been for some time expecting a letter from Major Barry. Remember me kindly to your family, and believe me to be, wherever my lot may be cast,

Your faithful, devoted and grateful friend,

JAMES BUCHANAN.

TO THE REV. EDWARD BUCHANAN.[1]

ST. PETERSBURG 13th October 1832.

MY DEAR BROTHER

I received yours of the 12th August dated Union, Va., on the 2d Instant. It gave me a gloomy picture of the state of poor George's health & has deprived me of the last ray of hope in relation to his recovery. Indeed whilst I am writing this I have

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 152.

too much cause to apprehend that your next will announce that he has bidden an eternal adieu to this vain & transitory world. I had conceived the highest hopes of his future eminence & usefulness. His talents were of the first order, his manners were popular & his principles were I believe perfectly pure. Alas that his sun which rose so brightly & promised such a brilliant day should so soon be extinguished. Such seems to have been the inscrutable decree of an all wise Providence. May our dear mother & may we all be enabled to say, Father thy will be done.

I feel the deepest gratitude towards Dr. Semmes for his kindness. My acquaintance with him was but slight but I shall make it a point should I ever have an opportunity of manifesting to him how much I have been penetrated by his kindness. In the mean time do not fail to make my sentiments known to him. It is probable that ere long I shall address him a letter returning him my thanks.

You can readily conceive what anxiety I shall feel until the arrival of your next. I trust it may have pleased Providence to enable poor George to reach Mercersburg.

My time here is gliding on not unpleasantly. When I reflect upon my past life & the many merciful dispensations of which I have been the subject I cannot be too thankful to the Almighty. This land of despotism is not the place where an American minister ought to have expected many friends; particularly as the Russian nobility have but little disposition to cultivate the acquaintance of strangers. It has yet so happened that several of the very highest order have shown me much kindness; and I have some reason to believe I shall be a favorite. The English merchants which are numerous, wealthy and respectable have been very civil & the Diplomatic Corps have paid me all the attention I could desire. Still I shall be happy when the day arrives that I can with honor leave this elevated station & return to my native land.

The ladies here as they are almost every where are the best part of society. Many of them & their children speak English very well whose husbands cannot speak a word of that language. There is a Princess Tscherbatoff here with whom I have become very intimate. She has a charming family & they have travelled much through Europe. She is a lady of uncommon intellect, brilliant accomplishments & yet preserves great personal attractions. I mention her name for the purpose of introducing a circumstance somewhat singular. By some means or other she

got hold of the Pilgrim's Progress & it has evidently produced a considerable effect upon her feelings. She has read several of the old English devotional books & likes to converse upon the subject of religion. It is strange that my first & most intimate acquaintance with a Russian Princess should have been with one conversant with the writings of such men as John Bunyan & Isaac Watts. I doubt whether there is another like her in this respect throughout the Empire. She is a member of the Greek Church & attached to it; but informs me that she often goes to hear a Mr. Neal preach who is I believe a kind of English Methodist. Her religion, & I sincerely believe she possesses it, does not prevent her from being very gay & entering into the fashionable amusements of her class. There is no estimating the good which an able & pious man may be instrumental in performing not only in his own generation, but long after he has been gathered to his fathers.

The weather is now about as cold here as it is in Pennsylvania towards the close of November. We have already had a slight fall of snow & several severe frosts. In going out to dinner in the country on the last day of September I observed a very large oats field in shock. Very little of it had been taken in. You may judge of the nature of the climate from this circumstance: though this season has been remarkably cold & damp. I can now readily believe what I have often heard since my arrival that I should suffer less from cold in this country than in my own. They regulate the heat of the houses by a thermometer; & their stoves are so admirably contrived that they are large & beautiful ornaments & consume but very little wood compared with those of our own Country.—My health still continues to be good, thank God!

Give my kindest love to my mother. How often do I now think of her with gratitude & affection! to Jane, Maria, & Harriett & to poor George if he be still living. Remember me to Mr. Lane affectionately & to all the family. I have never had the scrape of pen from Harriett since her marriage. I fear she may not be happy. What do you think of Mr. Henry? I shall send this letter enclosed to Mr. Lane, with directions that they may read it if you should not be in Mercersburg. Remember me to uncle John, Alexander & his lady, Mr. Reynolds & his lady, & to Mrs. Martin & Molly Talbot & believe me to be ever

Your faithful & affectionate brother

James Buchanan.

The Rev: Edward Y. Buchanan.

FROM COUNT NESSELRODE.[1]

[Oct. 10–22, 1832.]

[Note to James Buchanan from His Excellency Count Nesselrode.]

Le soussigné s'est fait un devoir de rendre compte à sa Majeste L'Empereur des ouvertures que le Gouvernement des Etats-Unis d'Amérique a fait parvenir au Ministère Impérial, d'abord par l'intermédiaire de Mr. Randolph de Roanak, et en dernier lieu par Monsieur Buchanan, Envoyé Extraordinaire et Ministre Plénipotentiaire des dits Etats-Unis, et qui ont pour objet la conclusion d'un traité de Commerce et de navigation entre les deux pays, ainsi que celle d'une convention sur les droits maritimes des neutres en tems de guerre.

En examinant ces propositions avec la sérieuse attention qu'elles réclamaient, le Gouvernement Impérial n'a pu ne pas apprécier la franchise qui a caractérisé les explications et le développemens dont le Gouvernement des Etats Unis les a fait accompagner. C'est avec la même franchise que le soussigné à l'ordre d'y répondre aujourd'hui. Il s'acquittera d'abord d'un devoir bien agréable, en assurant Monsieur Buchanan que les propositions dont il s'agit, ont offert à Sa Majesté Impériale une nouvelle preuve des dispositions amicales du Gouvernement Américain envers la Russie, et que Sa Majesté a surtout remarqué avec une véritable satisfaction le désir qui anime ce Gouvernement de rendre de plus en plus actives et avantageuses aux deux nations, les relations de bonne harmonie et les communications commerciales qui depuis tant d'années subsistent entr'elles. Un désir semblable a constamment guide le Gouvernment Russe dans ses rapports avec les Etats-Unis. Fidèle aux principes que Ses Augustes Prédecesseurs ont adoptés et suivis à cet egard, et auxquels le Cabinet de Washington a si franchement rendu la plus entière justice, L'Empereur n'a pas moins à coeur de maintenir et de consolider le système de bienveillance réciproque sur lequel sont basés les rapports mutuels des deux pays. Ce but important a été atteint jusqu'ici par l'application du Commerce de la Russie avec les Etats-Unis, des maximes générales qui servent de base à la legislation commerciale de l'Empire. En effet, il en est resulté quant au Commerce Américain dans les ports Russes, un état de choses éminemment satisfesant pour les deux pays, et qui porte en lui-même la garantie de sa durée sans avoir besoin pour cela d'être consacré par une transaction spéciale.

Le système commercial de L'Empire, tel qu'il se trouve établi depuis des nombres d'années, accorde des droits égaux à toutes les nations amies. Il doit ses développemens progressifs tant à ce principe d'une parfaite égalité, qu'à la faculté que le Gouvernement Impérial s'est constamment ménagée, de modifier selon les besoins du moment et de perfectionner sa législation, soit pour encourager l'industrie nationale ou la protèger contre une concurrence préjudiciable, soit pour lui ouvrir de nouveaux débouchés. Basé sur ces maximes, le système commercial de L'Empire n'admet pas, sauf quelques exceptions que des circonstances locales ont rendu nécessaires, des combinaisons isolées ou des traités de commerce qui assureraient des

[1] Doc. A, with despatch No. 8, from Mr. Buchanan to Mr. Livingston, October 31, 1832. See infra, p. 253. MSS. Department of State.

avantages exclusifs à une nation quelconque ou imposeraient au Gouvernement Russe des obligations, auxquelles il ne pourraient satisfaire qu'aux dépends de ses relations avec d'autres nations ou bien au préjudice de ses propres sujets.

Ce sont ces considérations générales que l'Empereur a cru ne pas devoir perdre de vue, en examinant les propositions du Cabinet de Washington; et elles ont paru décisives aux yeux de Sa Majesté. Le soussigné a l'honneur de les exposer ici avec une entière franchise, afin de ne laisser aucun doute dans l'esprit de Monsieur Buchanan sur les véritables motifs qui ne permettent pas au Gouvernement Impérial de donner la main à une combinaison de la nature de celle qui vient de lui être proposée.

Quels seraient d'ailleurs les avantages additionnels que, dans un traité de commerce et de navigation, la Russie pourrait offrir aux Etats-Unis? Leur pavillon jouit dans les ports Russes de toutes les prérogatives qui sont accordées aux nations les plus favorisées. Sous le rapport du payement des droits de douane, il est même assimilé au pavillon national. De plus, les navires Américains sont admis, à l'egal de ceux des autres nations, à exploiter le commerce de la mer noire, et c'est un avantage que L'Empereur se félicitera toujours de leur avoir assuré par le traité D'Adrinople.

Les communications que le Cabinet de Washington a fait adresser au Ministère Impérial, prouvent qu'il apprécie tout ce qu'un tel état de choses offre d'utilité réele à la navigation marchande de L'Amérique du Nord, et qu'il reconnait toute l'équité et l'impartialité des dispositions, auxquelles il en est redevable. Mais il témoigne le désir de voir supprimer les droits différentiels que les navires Américains, comme tous les navires étrangers, payent dans les ports Russes à différens titres, tels que droit de tonnage, &c. &c.

A cet egard, le soussigné se fait un devoir de communiquer les observations suivantes à Monsieur Buchanan:

La principale différence, contre laquelle réclame le Gouvernement Américain, était celle qui concernait le droit de tonnage, payé par les navires étrangers à chaque voyage, tandisque les navires Russes ne le payaient qu'une fois par an. Cette différence n'existe plus, depuis que par suite du règlement additionnel du Février 1830. § 64 les bâtimens Russes sont assujettis, à l'égal des étrangers, au payement du droit de tonnage, *chaque fois* que venant de l'étranger, ils entrent dans un port Russe, ou qu'ils en sortent pour aller vers un port étranger quand même ils feraient plus d'un voyage durant le cours d'une navigation.

Dans les ports des trois Gouvernemens de la Baltique, de même que dans ceux de la mer noire, il se prélève à différens titres des droits sur des navires qui viennent y mouiller, et ces droits sont à quelques égards, plus forts pour les étrangers que pour les nationaux. Mais comme leur perception tient d'ancienne date aux immunités des dites villes, le Gouvernement ne croirait pas, au moins pour le moment, pouvoir les abolir. Et quand il le pourrait, cette concession s'étendrait nécessairement aux pavillons de toutes les nations amies, et dès lors l'avantage que le commerce des Etats-Unis aurait pu s'en promettre, deviendrait en quelque sorte illusoire. Au reste, les droits différentiels, prélevés dans les dites villes, sur les navires étrangers, n'ont pas pour but de favoriser plus spécialement une nation au préjudice de l'autre; mais ils sont principalement destinés à protéger la

marine marchande Russe, et à lui assurer les facilités, dont elle a encore besoin pour prendre quelque développement. Cette circonstance explique tout à la fois et justifie le maintien de ces droits.

Le soussigné terminera ces observations par une considération générale.

Le système commercial de la Russie, fruit d'une longue expérience, est basé sur le principe de ses convenances intérieurs, principe que chaque Gouvernement est en droit et même a l'obligation de consulter avant tout. Le Gouvernement Impérial reconnait qu'une juste réciprocité doit former la base des relations commerciales, de même que des rapports politiques entre tous les Etats. Mais il ne croit pas qu'une conséquence de ce principe quant au commerce, doive être pour la Russie de changer son système général, toutes les fois que d'autres Etats apportent des modifications au leur, selon leurs convenances particulières. Le système qui régit actuellement les relations commerciales de l'Empire, et qui établit, pour l'importation des marchandises étrangères, une parfaite égalité entre tous les pavillons étrangers et le pavillon Russe, a été introduit, sans que le Gouvernement Impérial ait cru devoir réclamer de ce chef, dans d'autres Etats, une assimilation semblable en faveur de ses navires marchands. Le commerce Américain a même été admis à profiter des avantages que lui offrait ce système, longtems avant que par la loi de 1824 le Gouvernement des Etats-Unis eût formellement adopté le principe de réciprocité; et aujourd'hui même les citoyens de l'union jouissent en Russie, dans la perception de leurs héritages et dans leurs affaires litigieuses, de facilités et de prérogatives, qui ne sont pas, à un égal degré, accordées aux sujets Russes dans les Etats-Unis.

Il résulte de l'ensemble de ces considérations, que sauf les différences de droits, mentionnés plus haut, et qui ont d'ailleurs beaucoup perdu de leur importance, par suite des dispositions que le règlement de 1830 renferme au sujet du droit de tonnage,—le commerce Américain jouit effectivement en Russie de tous les avantages qu'un traité de commerce aurait pour but de lui assurer;—que si les relations commerciales entre les deux pays sont encore susceptibles de recevoir des améliorations, ce n'est pas du Gouvernement Impérial qu'il dépend, pour le moment au moins, de les lui procurer; mais que quelles que soient à cet égard les dispositions du Gouvernement Américain, L'Empereur verra toujours avec un vif intérêt ce commerce se développer sur la base des relations actuellement existantes; et que pour sa parte Sa Majesté Impériale ne cessera de vouer une sincère solicitude à ce que ces mêmes relations tournent de plus en plus au profit des deux peuples, et servent en même tems à rassurer les liens d'amitié qui unissent leurs Gouvernemens.

Indépendamment de la proposition d'un traité de commerce et de navigation, le Cabinet de Washington a temoigné encore le désir de convenir avec le Gouvernement Impérial d'une transaction qui règlerait les droits des neutres en tems de guerre. Cette seconde proposition, en autant qu'elle a pour but de former un lien de plus entre les deux Etats, et de limiter, autant que possible, les effets désastreux d'une guerre sur la prospérité des peuples comme des particuliers, n'a pu trouver à ce double titre, qu'un accueil favorable auprès de L'Empereur. Mais Sa Majesté Impériale n'a pas dû se dissimuler qu'une convention de la nature de celle qui vient de lui être proposée, règlerait entre deux Puissances isolément des questions de droit public, sur lesquelles il existe des théories diverses et même contra-

dictoires, que loin de couper court aux discussions sur les droits maritimes, elle en provoquerait peut-être sans nécessité le renouvellement, dans un moment surtout où l'État des affaires générales en Europe ne permet pas d'espérer une prompte entente sur des questions aussi délicates, entre les Puissances qui y sont le plus directement interessées. Le soussigné croit donc pour le moment ne pouvoir mieux faire que de se référer au contenu de la note que dès le 1 Février 1824, il a remise à Mr. Middleton, en ajoutant l'assurance, que les principes et les voeux énoncés alors au nom de l'Empereur Alexandre, de glorieuse mémoire, sont encore ceux de son Auguste Successeur, et que Sa Majesté Impériale se félicitera de pouvoir un jour avec le concours des Puissances Alliées de la Russie, s'associer au Gouvernement des Etats-Unis pour une négotiation dont le résultat serait un bienfait pour l'humanité.

En priant Monsieur Buchanan, Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats-Unis d'Amérique, de porter la présente note à la connaissance du Cabinet de Washington, le soussigné a l'honneur de lui réiterer l'assurance de sa considération très-distinguée.

(Signé) NESSELRODE.

St PÉTERSBOURG le 10 Octobre 1832.
A MONSIEUR BUCHANAN.

TO COUNT NESSELRODE.[1]

[Oct. 11–23, 1832.]

In pursuance of the wish expressed by His Excellency the Vice Chancellor to the Undersigned, at their interview yesterday, he has now the honor of presenting, in a modified form, the proposition which he submitted on the 14 26th day of June last, for the conclusion of a Treaty of Commerce and Navigation between His Imperial Majesty and the United States of America.

The President of the United States, far from desiring that His Imperial Majesty should enter into any engagements which might prevent him from increasing and changing, according to his pleasure, the duties upon all articles which may be imported into His dominions, or even from prohibiting their importation altogether, would not enter into any stipulation on behalf of the United States which might deprive them of the same power. The right of protecting domestic industry, or of raising a revenue on Imports, according to the policy or the necessities of Nations ought never to be abandoned by any Treaty. In proposing, therefore, to treat with the Government of His Imperial Majesty,

[1] Enclosure B, with despatch No. 8, from Mr. Buchanan to Mr. Livingston, October 31, 1832. See infra, p. 253. MSS. Department of State.

the Cabinet at Washington has not, and never had, the least intention of attempting to interfere with the free exercise of this inherent right, whenever it might suit the convenience of either nation. In it's exercise, from time to time, as both Governments might deem expedient, nothing more could be expected, than that each of them should be bound, during the continuance of the Treaty, to preserve the wise policy which at present exists, of making no distinction between the duties on articles imported, whether arriving in the vessels of the one, or of the other.

As Russian and American Vessels, according to the information contained in His Excellency's note of yesterday, already pay the same tonnage duties in the Ports of the Empire, there could be no difficulty in arranging this branch of the question, in the same manner with that of the duties payable on Imports. The trifling discriminations now existing in favor of Russian Vessels, in relation to charges for anchorage &c. &c. could present no serious obstacle, as they might be entirely omitted in the terms of the Treaty, and left to the separate regulations of the two Governments, if the Imperial Administration should not think proper to abandon the distinction altogether.

Upon the whole, the Undersigned is satisfied that a Treaty might be concluded upon terms of mutual reciprocity, which would be very beneficial to both Countries, without in any degree changing the commercial system of either. Against the commercial regulations which have been adopted on the part of His Imperial Majesty, the United States have no complaints to make. They are wise and liberal, and afford equal advantages to all friendly nations.

After what has been said, the Undersigned need scarcely observe, that the President of the United States seeks not to obtain for American vessels, in the Ports of Russia, any exclusive advantages, nor does he desire His Imperial Majesty to enter into any stipulations which might affect the present commercial relations of his subjects with any other Nation.

The Undersigned does not deem the present a proper occasion to enlarge or insist upon the general advantages which would result to both Countries, from giving to the principles of fair and liberal reciprocity already existing, the sanction of a Treaty, instead of leaving them to be enforced by the separate regulations of the two Governments. For his views upon this subject, —views which subsequent reflection has only rendered clearer and stronger, he would refer to the note which he had the honor

of addressing, on the 26. June last to His Excellency Count Nesselrode.

In relation to the particular trade with the Black Sea, however, he will make one or two remarks. The Undersigned believes, that it depends much upon the final decision of His Imperial Majesty, whether ever, or at least for many years to come, either Russia or the United States shall enjoy the advantages, which both of them had just reason to expect, from the Treaty of Adrianople, and that subsequently concluded by the United States with the Sultan. It cannot be denied that American Commerce and Navigation have been placed throughout the Russian Empire, by it's commercial regulations, upon the footing of the most favored Nation; and yet what has been the result? It has been such as to disappoint the expectations of every person not practically acquainted with the subject. By a letter which the Undersigned has received from the American Consul at Odessa under date of the 2/14 of September last, he is informed that but one American vessel had entered that Port during the Summer. Thus it appears, that a nation whose commercial Marine is increasing with a rapidity beyond example, and which is pushing it's commerce into every other portion of the Globe, has almost entirely neglected the advantages to be derived from a trade with the fertile countries surrounding the Black Sea.

It may be said, and perhaps with some degree of Justice, that American Navigation is at present as secure from interruption, in passing through the Mediterranean and to the Russian possessions on the Black Sea, as it would be, in case a Treaty existed with Russia. This may be true to a great extent; but yet Statesmen often find it expedient to yield even to honest prejudices, for the purpose of promoting the public good. Considering that the Merchants of the United States conduct their trade with almost all other nations under Treaty stipulations, that the Countries along and near to the Levant are at present in a state of agitation unfavorable to the peaceful prosecution of foreign commerce, and that the Black Sea is in a distant quarter of the world from the United States, it is not to be wondered that their navigation should be slow in embarking in this comparatively unknown and hazardous enterprize. The Undersigned is convinced that a Treaty of commerce would almost immediately change the aspect of affairs, and call into vigorous existence a new Commerce equally advantageous to both Nations. When it is considered that such a Treaty as that proposed by the President of the United

States could not change the commercial regulations which now actually exist in both countries, either towards each other or in respect to foreign Nations, would it not be wise to make the experiment? It could do no harm in any event, and the Undersigned entertains not a doubt, that it would be productive of much good. Should His Imperial Majesty be willing to consummate the work which He so happily commenced in the Treaty of Adrianople, the Undersigned will hazard the prediction, that before the close of another season, his extensive & valuable possessions on the Black Sea will have sensibly felt the advantages of American Commerce. Such a Treaty might be limited in it's duration to a few years; because after commerce has once fairly begun to flow in new channels, it requires no aid but the interest of both parties to keep it in successful motion.

The Undersigned will present another view of this subject, which, judging from the kind sentiments His Imperial Majesty has instructed Your Excellency to express towards the United States, may not be altogether overlooked. The subject of a Commercial Treaty between the two Countries has long been depending. Much importance has been attached to it in the United States, and circumstances have occurred tending to excite the hopes both of the President and people that this new bond of kindly feeling between the two Powers might be established. Now, although it is clear, that one Nation has no right to complain of the refusal of another to conclude a commercial Treaty, yet in this particular case, the information would be received in the United States with feelings of disappointment. On the other hand, should a Treaty be concluded, the moral effect upon the people of the United States would be great. The bonds of friendship which have for so many years happily cemented the two Countries would be strengthened and confirmed, and a Nation of nearly thirteen Millions of people, advancing with rapid steps towards power and greatness, and exercising a corresponding moral influence throughout the world, would be taught to feel, with still greater sensibility, the kindness which it has experienced on so many occasions both from the late distinguished Emperor and His illustrious Successor.

The note of His Excellency the Vice-Chancellor contains an allusion to difficulties which have been experienced by Russian subjects in the United States, in relation to their inheritances and law suits. The Undersigned is ignorant of their nature, having received no information upon the subject from his own Govern-

ment. He would therefore merely suggest, whether a provision similar to that contained in the eleventh article of the Treaty of Commerce between the Emperor of Austria and the United States might not prevent similar difficulties hereafter.

In again adverting to this Treaty with Austria, which the Undersigned has had the honor, upon a former occasion, of transmitting to the Vice-Chancellor, he would observe, that it contains the principles expressed in a clear and distinct manner, of the free and liberal commercial policy which the United States have been so long occupied in maturing and perfecting. It would be easy, therefore, by some changes in it's phraseology; both to meet the views contained in this note, and obviate the objections in that which the Undersigned had the honor of receiving from the Vice-Chancellor on yesterday.

In conclusion, the Undersigned begs to observe that these views, which he had the honor of expressing to His Excellency at their interview yesterday, are now submitted in the form of a note in consequence of his own kind invitation to that effect.

He seizes this occasion to offer to His Excellency Count Nesselrode the unfeigned assurance of his most distinguished consideration.

St. Petersburg, October 11/23. 1832.

James Buchanan.

FROM COUNT NESSELRODE.[1]

James Buchanan, Esquire, &c. &c. [Oct. 18–30, 1832.]

Monsieur,

J'ai l'honneur de Vous transmettre ci-près la réponse que l'Empereur m'a autorisé à faire à Votre note du 11/23 du courant, et j'aime à croire que vous la trouverez de nature à satisfaire au voeu que Vous m'avez itérativement exprimé au nom de Votre Gouvernement de voir les relations commerciales des deux pays assurées par un traité de Commerce et de navigation. Comme il vous paraîtra sans doute utile, Monsieur, qu'avant le départ de Mr. Clay nous ayons encore un entretien sur cet objet, j'oserais Vous proposer de vouloir bien passer à cet effet chez-moi demain à 1½ heures.

Veuillez agréer, Monsieur, l'assurance de ma considération distinguée.

ce 18 Octobre 1832.

(signé)

Nesselrode.

a Mr. Buchanan, &c &c.

[1] Enclosure C, with despatch No. 8, from Mr. Buchanan to Mr. Livingston, October 31, 1832, infra, p. 253; MSS. Department of State.

FROM COUNT NESSELRODE.[1]

[Oct. 18–30, 1832.]

James Buchanan, Esquire, &c. &c.

Le Soussigné a reçu la note que Monsieur Buchanan, Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats-Unis d'Amérique, lui a fait l'honneur de lui adresser le 11/23 du courant, et il s'est empressé de la porter à la connaissance de l'Empereur. Dans cette pièce, en répondant à la note du Ministre Impérial du 10 Octobre, Monsieur Buchanan a renouvelé, mais avec quelques modifications, les propositions antérieures de son Gouvernement pour la conclusion d'un traité de commerce et de navigation avec la Russie. En même temps il a bien voulu préciser davantage, et le caractère qu'il lui paraîtrait convenable d'imprimer à une telle transaction, et les considérations spéciales qui semblent devoir en recommander la conclusion.

Ces explications, auxquelles le Cabinet Impérial n'a pu s'empêcher de vouer la plus sérieuse attention, lui ont fait entrevoir la possibilité de concilier un traité de commerce et de navigation entre les deux pays avec le maintien des deux principes généraux sur lesquels repose le système commercial de l'Empire. Cette chance lui a paru d'autant plus satisfaisante, qu'elle lui offre l'occasion de prouver une fois de plus au Gouvernement des Etats-Unis la sincérité des dispositions amicales, dont la note du Soussigné en date du 10 Octobre, renferme l'expression, et en même temps de former un nouveau lien entre les deux pays dans un moment où les résolutions, adoptées récemment aux Etats-Unis, relativement aux droits d'entrée sur quelquesuns des principaux articles du commerce d'exportation russe, promettent de faire prendre un nouvel essor aux relations réciproques.

En conséquence, l'Empereur a consenti à ce que des pourparlers fussent entamés avec Monsieur Buchanan sur tel arrangement commercial, qui, sans dévier des principes généraux développés dans la note précédente du Ministère Impérial, et tout en laissant intact des réglemens spéciaux, destinés à favoriser le pavillon russe, seroit jugé le plus propre à rendre de plus en plus actives et réciproquement avantageuses les relations de commerce et de navigation qui éxistent entre les deux pays.

Le Soussigné s'empresse de donner connaissance préalable de cette résolution Suprême à Monsieur Buchanan, et il saisit cette occasion de réiterer à Monsieur l'Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats-Unis d'Amérique, l'assurance de sa considération très-distinguée.

(signé) Nesselrode.

St Pétersbourg, le 18 Octobre 1832.

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[1] Enclosure D, with despatch No. 8, from Mr. Buchanan to Mr. Livingston, October 31, 1832, infra, p. 253; MSS. Department of State.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 8.)

St. Petersburg October 19/31 1832.

Sir

The agreeable task now devolves upon me of rendering you an account of my negotiations with this Government, up till the present moment. After the perusal of this Despatch, you will, I think, be satisfied, that but few more singular occurrences have been recorded in the history of modern diplomacy, than that which I am about to relate. There is, at present, the fairest prospect of speedily concluding a Commercial Treaty with this Government; and that too, notwithstanding the determined hostility of Count Cancrene the Minister of Finance and his friends in the Imperial Cabinet.

On Saturday the 8/20 Instant, I received a note from Count Nesselrode, informing me that he had communications to make to me, and requesting that I would call upon him the succeeding Monday. On that day I repaired to the Foreign Office, and soon after my arrival, he asked me if the answer which he was then about to give to our propositions would be in time to reach Washington, before the meeting of Congress; to which I replied in the negative; but stated that it probably might, within a fortnight after that period. He then enquired whether I would have any opportunity of sending it immediately. I told him if the answer should prove favorable, as I trusted it would, I should feel it to be my duty to make an opportunity, if that were necessary; but that Mr. Clay was anxious to pay a visit to the United States, and I had yielded to his wishes.—Captain Barry having agreed to perform the duties of Secretary of Legation, during his absence; and that he might probably leave St. Petersburg by the Steam-Boat on the succeeding Wednesday.

The Count then verbally communicated in substance the reasons, contained in his note of the 10/22 Instant, which had induced the Emperor to decline our proposition for concluding a Treaty of Navigation and Commerce between the two Countries; but made no allusion whatever to the proposed Treaty concerning Maritime Rights.

[1] MSS. Department of State. Some passages from this despatch are incorrectly printed in Curtis's Buchanan, I. 167, 172–173, 168, 169. A passage from it is also given in H. Ex. Doc. 111, 33 Cong. 1 Sess. 60–62.

In the course of his explanations he informed me, I thought with some degree of emphasis, that the Emperor had yielded in this matter to the opinions of Count Cancrene the Minister of Finance and the Minister of the Interior, (Mr. de Bloudoff,) leaving me to infer, that the result had not been in accordance with his own judgment.

After he had finished his explanations, he delivered me the note to which I have alluded, and a copy of which will accompany this communication. (Vide Doc. A.[1])

I then commenced some observations intended as an indirect reply to those which he had made. I soon found they were agreeable, and he encouraged me and indeed requested me more than once to proceed. This led to a full and free conversation on the subject of the commercial Treaty, which he told me should be altogether confidential;—an assurance not necessary, at least so far as I was concerned.

In the course of this conversation I explained and illustrated the views which I have stated in my note to him of the 11/23 Instant, a copy of which you will receive with this despatch.[2] Towards the conclusion of the interview he laid aside altogether, or at least appeared to do so, the wary diplomatist, and his manners became frank and candid. He made the request, and repeated it at least twice, that I should submit a new proposition for the conclusion of a Commercial Treaty, and accompany it by an abstract of the explanations which I had just made, impressing it upon me to advert especially to the trade with the Black Sea, and the moral influence, to use his own expression, which such a Treaty might have on the people of the United States. I told him I should do so with pleasure. He then requested me to send it as soon as I conveniently could, and he would immediately submit it to the Emperor and give me an answer before the departure of the last Steam Boat, which was to leave St. Petersburg on Wednesday the 10–31 Instant. He afterwards asked me whether I intended to send the note to Washington, which he had delivered to me, by the next Steam Boat; and from his manner it was easy to perceive that he wished I would not. I replied, that I should certainly delay sending it until the last Steam Boat, hoping that in the meantime I might receive a better one.

During our interview I took occasion to mention, that our

[1] Supra, p. 244.
[2] Supra, p. 247.

late Tariff ought to be highly satisfactory to Russia;—that the duties had been considerably reduced on the importation of hemp, sail-duck and Iron,—the articles in which they were most interested. He expressed the pleasure which the adoption of this measure had afforded him; but said he believed there was a strong party opposed to it, and they might procure it's repeal. I replied, that it had been finally adopted by a considerable majority in both Houses of Congress which was chiefly composed of Representatives from those States most friendly to the protection of domestic manufactures; and that the strongest opposition to it, at present, came, not from the Tariff States, but those which desired to see the duties still further reduced. That but little probability therefore existed, that the duties would be increased; as the manufacturing States themselves had yielded to the necessity of the late modification, from the consideration that without it, the revenue of the Country would have greatly exceeded it's necessary expenditures. That judging from these circumstances, should any change take place, the probability was rather in favor of a decrease than an increase of the duties.

Some conversation, not necessary to be repeated, was held on other subjects, and I took my leave much satisfied with the interview, and auguring from it the most happy results, should Count Nesselrode possess sufficient influence to carry his own wishes into effect, against those of Count Cancrene.

My note was sent to the foreign Office a little before one O'Clock on Wednesday last. A few hours afterwards, the Baron de Brunnow,—a Counsellor of State, and the confidential friend of Count Nesselrode in the Foreign Office, called at my house, but did not find me at home. He paid me a visit the next morning, and said he had been requested by the Count to wait upon me and assure me that the views contained in my note were perfectly satisfactory to him, and were so clearly and distinctly expressed that they could not be misapprehended; that he should be happy to become the medium of presenting them to the Emperor and of using his influence to have them adopted; but he suggested to me the propriety of making a trifling change in their phraseology. That he would rather it should not appear on the face of the note, that it had been written in consequence of his wish and at his invitation; as he had just before delivered me the decision of the Emperor declining to conclude the commercial Treaty. From personal considerations, therefore, he would prefer a modification of it's first sentence so as to substitute for

the words "In pursuance of the wish expressed by His Excellency the Vice Chancellor to" &c. the words "In pursuance of the *conversation* between His Excellency the Vice-Chancellor and" &c. and to strike out the last sentence but one altogether; to wit, "In conclusion the Undersigned begs to observe, that these views which he had the honor of expressing to His Excellency at their interview yesterday are now submitted in the form of a note, in consequence of his own kind invitation to that effect."

To this proposition I at once acceded, believing it my duty to pursue the best means consistent with honor for obtaining the Treaty, and not to embarrass Count Nesselrode, whom I believed to be sincere, with any personal difficulties in the struggle for influence with the Emperor, which might probably ensue between him and Count Cancrene.

The Baron requested me to have the changes made in the note as soon as convenient, it being the intention of Count Nesselrode to have it translated into French on that day, and go with it to the Emperor the next morning; so that I might, if possible, obtain an answer before the departure of the last Steam Boat. He said that Count Cancrene was opposed to all Commercial Treaties, but Count Nesselrode was not able to perceive what objections could be urged against such an one as I had proposed. That the Count had repeated the observation, contained in my note—"that Statesmen often found it expedient to yield even to honest prejudices for the purpose of promoting the public good," and said he had no doubt such a Treaty would produce a beneficial effect on the American trade with the Black Sea.

After our conversation had ended on this subject, I referred to that portion of the note of Count Nesselrode which declined our offer to conclude a Treaty on Maritime Rights, and said that the President would, probably, not be prepared for this refusal. I told him that on the 28. August, 1828, N. S., a few months before the election of General Jackson, Baron Krudener had addressed a communication to the Department of State which gave a strong assurance that the Emperor was willing to conclude such a Treaty. That when General Jackson assumed the reins of Government, in the Month of March following, he had found this communication on file, and that was the principal reason why he had given Mr. Randolph instructions to conclude a Treaty concerning neutral rights. I was, therefore, surprised, no allusion whatever had been made to this important letter in the note of

Count Nesselrode, & that he had passed it over as though it had never existed, whilst he referred to the note he had addressed to Mr. Middleton so long ago as the 1st February 1824, for the purpose of explaining the views of the Imperial Government at the present moment.

I then produced the communication of Baron Krudener to Mr. Brent of the 16/28 August 1828, and read it to Baron Brunnow. After he had perused it himself, he expressed his surprise at its contents, and said he did not believe a copy of it had ever been transmitted to the Foreign Office; that he could say for himself he had never seen it before. He thought the Baron must have gone further than his instructions had warranted, and that instead of expressing the willingness of the Emperor to *adopt by mutual agreement* the principles concerning neutral rights proposed by the United States, he ought merely to have expressed the *concurrence* of the Emperor in those principles, and his desire to preserve and protect them. He added that these rights were best maintained by the power of nations, and we had nobly defended them during our late war with England. I replied that was very true, and the United States were becoming more and more powerful every year, and had less & less occasion to rely upon Treaties for the maintenance of their Neutral rights.

I afterwards remarked, that I thought the Count, from the tenor of his note, had probably overlooked one circumstance of importance in considering this subject, as he had placed the refusal chiefly on the ground that it would be useless for only two Powers to conclude such a Treaty between themselves. That the fact was, the United States already had Treaties of a similar character with several Nations, which I enumerated; and that if Russia had concluded this Treaty, in case she should hereafter unfortunately be engaged in war with any of these Powers, the property of her subjects would be secure from capture, by their ships of war, on board of American vessels. He replied, that as to Prussia, Sweden and Holland, there was little danger of any war between them and Russia, and that we had no such Treaties with the Maritime Powers with whom Russia was likely to be engaged in hostilities, (evidently, as I supposed, alluding to England and France).

In the course of the conversation, I expressed my regrets that I had never seen the note addressed by Count Nesselrode to Mr. Middleton in February 1824, and that there was no copy

of it in the archives of the Legation here. He then said he would take pleasure in sending me a copy (which I have since received) and thought he might assure me with perfect confidence from the feelings of Count Nesselrode towards myself, that he would be happy to send me at all times copies of any other papers I might desire in the foreign office.

He at first proposed to repeat this conversation to Count Nesselrode. I replied, I had no objection. It was not intended by me as an attempt to renew the negotiation at the present time; but merely to make some suggestions to him in free conversation. Before he took leave however he said he believed, that as his mission to me had been of a special character, he would report nothing to the Count but what had a relation to the Commercial Treaty, except that I desired to have a copy of his note to Mr. Middleton; but that after the other subject was finally disposed of, he thought I ought to mention these things to Count Nesselrode myself. I told him I probably might; that what I had said to him on this subject had been communicated in a frank and friendly spirit, and I considered it altogether unofficial.—No doubt he repeated every word.

About an hour after his departure, I sent back my note to Count Nesselrode—modified according to his wishes, in the two particulars I have before mentioned. The conclusion of it was changed so as to read as follows:—"In conclusion the Undersigned begs, in submitting these views to His Excellency Count Nesselrode, to offer to him the unfeigned assurance of his most distinguished consideration."

I received last night (the 30th) the two notes from Count Nesselrode, copies of which are enclosed.[1]

I called on him to day at the hour appointed and found him in fine spirits, and in the most frank and candid mood. He asked me at once if I had received his notes of last evening, and upon my answering in the affirmative and expressing my satisfaction with their contents, he said it would be impossible to conclude the Treaty before the departure of Mr. Clay tomorrow: and added, you will of course send these notes by him to Washington. I replied, I had thought of suggesting to him that I would detain Mr. Clay for a week or a fortnight, if he supposed that by that time he might be the bearer of the Treaty.—That I was anxious for it's speedy conclusion; because I had ventured to

[1] Supra, pp. 251, 252.

predict what would be it's consequences on our Trade in the Black Sea, during the next Season; and to establish my character as a prophet, it would be necessary the Treaty should arrive in the United States in time to enable our merchants to prepare for so distant a voyage. He said he thought it might certainly be concluded within a fortnight,—that it was a very simple matter, our commercial Treaty with Austria would furnish the ground work, and it would be easy to make the proper substitutions:—and he expressed a strong desire that Mr. Clay might be detained.

He then asked me if I should have any means of sending his notes to Washington by the Steam-Boat tomorrow, and offered to transmit them for me by his Courier to London. I informed him, that a friend of mine, Mr. Cayley,—an English Merchant in this City would go in the Steam Boat, that I had promised to give him a letter of introduction to Mr. Vail our Chargé d'Affaires at London, to whom I should also enclose my Despatch and request Mr. Cayley to deliver it in person, immediately on his arrival. From thence it would be transmitted forthwith to one of the Captains of our Packet Ships at Liverpool, without passing through the Foreign Office at London, who would carry it to New York. I also reminded him that Mr. Bligh, the English Minister had procured a Courier's Passport for Mr. Cayley. He said he should be sorry the British Government would get to know, at present, that such a Treaty was in contemplation. Upon my assurance that I was perfectly well acquainted with Mr. Cayley, and could place all confidence in his honor and integrity, he expressed himself entirely satisfied, and asked me if I would enclose a despatch from him to Baron Sacken under the same envelope. Upon my answer in the affirmative, he told me he would send it to me in the course of the evening. I need not inform you the reason why I was unwilling to entrust this Despatch to Count Nesselrode's Courier.

Thus, Sir, I have endeavored to give you a faithful relation of every thing of any importance which has occurred between this Government and myself, since the date of my last Despatch. For several weeks before the receipt of Count Nesselrode's first Note, I had but little expectation of concluding a commercial Treaty. Mr. Kielchen lately appointed Consul at Boston, by this Government, informed me, some time ago, that Count Cancrene had resolved never to consent to the conclusion of such a Treaty with any Power, whilst he continued in the Ministry; and his

influence with the Emperor, particularly on commercial subjects, was universally admitted to be very great. He has the character of being an obstinate man, and I scarcely allowed myself to hope, either that he would change, or be defeated, in his purpose. I feel the more happy, therefore, in being able to congratulate you upon our present favorable prospects.

The hour is now growing late, and but little time is left to say much concerning the proposed Treaty in relation to Neutral Rights. The true reason why this Government have refused to conclude it is probably hinted at in the latter part of Count Nesselrode's first note. At the present moment, they would be unwilling to recognize by Treaty any principles of public law which might be disagreeable to England. There is no doubt that all their energies, for some time past, have been directed to detach England from France, and France from England. This policy is known to the Ministers of both these Nations; but how far it has been attended with success, I cannot pretend to determine. It is still my belief, that the Emperor has determined to suffer these two Powers to enforce against the King of Holland the Treaty proposed by the conference at London, though I should not be astonished at any moment to hear, that he had changed his purpose. Independently of political considerations, his feelings and those of the Nobility are very deeply interested in the cause of his brother-in-law the Prince of Orange; and an observer of passing events in this City must feel, that any spark would be sufficient to kindle a war in Europe. Still, I am inclined to believe that peace will be preserved for some time longer. It is rumored that the Emperor is now collecting a very large army in the Province of Novogorod, to act as the rear guard of the Prussian Army, should it march towards the frontiers of France; but such is the mystery surrounding every political subject in this Country, that I cannot ascertain the truth of the report.

Should Russia assume an attitude of defiance towards England and France, it is more than probable she would agree to treat with us concerning Maritime rights. But ought we then to desire it? My mind never was directed to this subject, until since my arrival in St. Petersburg, and from the best reflection I have been able to give it, I fear we may yet have cause to repent that we have concluded so many treaties of this character.

If we had such a Treaty with Russia, and she should be engaged in war with England, upon the capture of any American vessel having the goods of her subjects on board, she would be

the first Power to call upon us to assert those principles of Maritime law which we had thus sanctioned. She might say, you eagerly solicited us to adopt these principles by Treaty, and why do you not maintain them against other Nations? It is true the Treaty does not expressly bind you to cause them to be respected by England, but it does assert your general maxims of Maritime law and we have a right to expect you will not suffer them to be violated with impunity. Might it not become an entangling alliance?

We now have such Treaties with a number of feeble Maritime Powers. In case we should find it necessary to go to war with any of them, might not it's commerce be completely protected under the flag of any other remaining neutral? The days of our feebleness have passed away, and it is perhaps a doubtful policy now to adopt measures in peace, which must arrest the free and vigorous action of our naval power in war.

Should England and France, against all probability in common with the rest of the world, consent to change the existing law of Nations, and adopt the principle that " free ships shall make free goods," it is not certain that even then, the neutral commerce of the United States would be much benefited. There is but little danger that any nation will hereafter act towards us with the same lawless violence which we experienced from both the principal belligerents, previous to our late war. Our power will hereafter afford us the best security against such outrages. If then goods, the property of belligerents, continue, as they now are, liable to capture on board of American vessels, the consequence must be that our merchants will generally become the owners of what is carried by our Navigation; and thus whilst we should lose but little in the employment of our tonnage, our merchants would gain much in the purchase and sale of the commodities. We are at present in no want of capital to conduct such a commerce. The trade will thus be converted from a mere carrying trade to one of which our merchants, as well as our ship owners must reap the advantages. Besides, a propitious impulse will thus be given to our manufactures, in spreading them, instead of those of the belligerents, throughout the world.

But I have already written more than I intended upon this subject. I wish to bring it to your serious attention, knowing that you understand it thoroughly; and I should be glad, after you shall have consulted the President, if you would communicate to me your views on this important question.

Of course none of these remarks apply to Treaty stipulations defining what shall be a legal blockade,—and what contraband of war.

I beg you will not believe for a moment, that because these are my private impressions, I have been the less zealous in promoting the wishes of the President in relation to this subject. It is a strange fact, that Count Nesselrode in his note of the 10/22 Inst. has thought proper entirely to overlook the letter of Baron Krudener to Mr. Brent of August 1828, although Mr. Van Buren had specially adverted to it in his instructions to Mr. Randolph, a document which has been in the Foreign Office here for more than two years, and to which I particularly referred in my note of the 14/26 June last.

You will perceive that I have yielded to the request of Mr. Clay, and given him permission to visit the United States during the approaching winter.—This arrangement was made with an understanding, that Mr. Barry should, in the meantime, perform the duties of Secretary of Legation. In thus yielding my assent, I was mainly influenced by two reasons;—the one that Mr. Clay was exceedingly anxious to settle his accounts with the Department, and the other to enable him to apply his salary, during his absence, to the extinguishment of a debt which he had contracted in this City, in endeavoring to appear in such a manner, with but $2000 per annum, as to prevent the Chargé d'Affaires of the United States from becoming a subject of general remark.

He first made an arrangement to go in the Czarina, a vessel bound directly to Boston, which would have cost him only $50; but was detained by me in the expectation that he might be the bearer of important Despatches. Then he intended to leave here by the Steam Boat tomorrow morning, and take passage from Hamburg direct to the United States. You have already learned why this economical plan was defeated.

The present Boat will be the last for the season, and should a Treaty be concluded, I must use him as a Courier by land in sending it to London; and to enable him to proceed, I must advance him, out of the contingent fund of the Mission, a sufficient sum to cover his expenses. These will necessarily be considerable; but not near half the amount which I should be obliged to pay for the same service, were I compelled to employ a special courier. Besides I know not whom I could employ for that purpose in St. Petersburg. I hope therefore the Department will have no difficulty in allowing his expenses.

In conclusion, I beg you to consider, that this Despatch has been necessarily written in great haste, and therefore not prepared with so much care as it ought to have been under other circumstances.

Yours very respectfully

JAMES BUCHANAN.

TO THE HONORABLE EDWARD LIVINGSTON
Secretary of State.

P. S. You will please to deliver the Despatch to Baron Sacken immediately, and send my letters to their destination with as little delay as possible. The Government detained the Steam boat which was to have started this morning until tomorrow morning.

TO MRS. SLAYMAKER.[1]

ST. PETERSBURG 31st October 1832.

DEAR MADAM/

I received your kind & agreeable letter of the 20th August last, on the 8th Instant. I scarcely know any thing, the perusal of which could have afforded me more pleasure. I left no friend in my native land for whose interest & welfare I have a greater solicitude than for your own. How could it be otherwise? Your conduct since the lamented death of your husband, whose memory I shall ever cherish, has been a model of propriety. The severest critic could not find fault with any part of it, unless it be that you have too much secluded yourself from society, of which you are so well calculated to be an agreeable & instructive member. I have never heretofore expressed these sentiments to you, because you might have considered them the language of flattery. As they now proceed from "a stranger in a strange land" I cannot believe you will doubt their sincerity.

I fear I cannot with truth defend the chastity of the Empress Catharine. She was a disciple of the school of the French philosophers & was therefore wholly destitute of religion—the surest safeguard of female virtue. Her natural disposition was, however good, & where her ambition & her pleasures were not concerned, she was an amiable & kind hearted woman. The Princess

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 154.

Dalgoroucki, one of my most intimate friends in this City, (if I ought to use the term upon so short an acquaintance,) is the grand-daughter of the youngest brother of the Orloffs. She has several times amused me with anecdotes which she had heard from her grand-father, all tending to prove the goodness of Catherine's heart. Among other things, it was not at all uncommon for her to rise in the morning & light her own fire, rather than disturb the slumbers of any of her attendants.—She took great delight not only in educating her own grandchildren, but others of the same age about the Court. Her son Paul however was always her aversion.

When he succeeded to the throne, he acted like a madman, & I have often had to laugh at the pranks of his tyranny. For example, he issued an edict commanding all persons—whether male or female, either in the summer or the winter, upon his approach, to alight from their carriages & stand in the street uncovered before him as he passed. Of course the latter part of the rule applied to foot passengers. An English merchant, still living in this City, attempted upon one occasion to make his escape as the Emperor approached but he was observed by the keen eye of Paul & was immediately sent for to the palace. His defence was that he was near sighted;—& the Emperor immediately presented him with a pair of spectacles & commanded him never to be seen in public without having them upon his nose. The command was literally obeyed & the merchant has ever since worn the spectacles. The anecdote is literally true.

The Emperor Alexander was a mild & amiable man; but his example, until near the close of his life, was not calculated to restrain the dissoluteness of manners which prevailed in the days of Catherine. Circumstances too tedious to mention in the limits of a hasty letter made him at last esteem his wife, the Empress Elisabeth, as she deserved. In the commencement of his reign, he was a libertine, but he died a fanatic. It is delightful to hear of the familiar intercourse which he held with his subjects. He visited many families in this City as a private gentleman, whom etiquette prevented from appearing at Court & upon such occasions he was as free & familiar—even with the children, as though he had been of an equal rank. He died disgusted with his high station, & exclaimed to Doctor Wyley his physician—who was remonstrating with him for not using his prescriptions, "I am sick of this world, why should I desire to live." Such is the end of human greatness.

The present Emperor is I think the finest looking man, take him altogether, I have ever beheld; besides he is a prince of great energy & ability. However we may detest his conduct towards the Poles, which has no doubt been exaggerated in the English & French papers, his moral conduct as well as that of the Empress, in all their domestic relations, is without a blemish. Their example in this respect has already had a happy influence on the nobility of this Country. On Saturday last I attended a Te Deum at Court—celebrated on the occasion of the birth of a young Grand Duke; & the gaieties of the season are expected to commence as soon as the Empress shall recover from her accouchement. She is remarkably fond of dancing in which she excels.

My time begins to pass much more pleasantly, or to speak with greater accuracy, less unpleasantly than it did at first. To be an American Minister is but a slender passport to the kind attentions of the Russian nobility. They know but little of our Country, & probably desire to know still less, as they are afraid of the contamination of liberty. I have therefore had to make my own way in their society, with but little adventitious aid, & I confess I am sometimes astonished at my own success. Among the ladies, who, in every portion of the world, are the best part of society, I have many agreeable acquaintances. A greater number of them speak the English language than of the gentlemen. Besides since my arrival here, I have learned to read & write the French, & now begin to speak it in cases of necessity.

Besides the nobility, there is an agreeable & respectable society here of wealthy English & German merchants, among whom I have spent many pleasant hours. Although they are not received at Court, many members of the Diplomatic Corps eat their good dinners & treat them as they ought to be treated, with kindness & civility.

I hope to visit Moscow before my return to the United States, & that too under favorable circumstances.

I sincerely rejoiced to hear of the good fortune of our friends of the Wheatlands. Lydia is a good little girl & deserves to be happy. I was pleased with the anecdotes you gave me in relation to the match, & the joy which my good friend Grace displayed upon the occasion. My worst wish towards them is, that they may derive all the happiness from it which they anticipate. They are an excellent family with whom I could wish you would be more intimate. I would be better pleased with

them, for their own sakes, if they were less extravagant; but "take them for all & all," I feel the warmest interest in their welfare.

I regret to learn that Aunt Anne in a state of depressed health & spirits has felt herself under the necessity of leaving her comfortable home in Lancaster, to take charge of her son Henry's family at the Iron works. It is just such conduct however as I should have expected from that excellent & exemplary woman. She will always sacrifice her own comfort to a sense of duty, or to the calls of humanity. I shall never forget her kindness towards myself. I beg of you to present her my best love (I think I may venture to use the expression). Remember me kindly also to Anny—& to Henry—Stephen & Samuel.

I have always appreciated the friendship of your mother as it deserved, & have felt proud of her confidence. I trust that your hopes may be realized, & that it may please Providence yet to permit me to enjoy many happy hours in her society. She possesses an admirable faculty of saying much in few words, & there is a point in her character which gives a peculiar force to her expressions. I know her to be an excellent mother & an excellent friend, & I warmly reciprocate her kind feelings. Say to her that I ardently wish her many pleasant days, & that the circumstances which have heretofore occurred to vex her peace may not prevent her from enjoying an old age of comfort & happiness.—Remember me also in kindness to all your sisters.

But in what terms shall I speak of Mrs. H.? None of my friends, except yourself, have mentioned her name in their letters, & I need scarcely add that I did not even indulge the hope of receiving one from herself. This I can say of her, & I now speak from actual knowledge, that her manners & her talents would grace the most powerful & splendid Court in Europe. I fear however that such a treasure is not destined to bless my pilgrimage.

I altogether approve your conduct in taking the Judge's daughter into your family. He is a most excellent man & will know how to appreciate your kindness. I regret to say I have received no letter from him since I left the United States. When you see him, please to present him my kindest remembrance.—I heartily rejoice that you did not remove to Columbia or Marietta.

From my last information from the U. S. I have reason to hope that the good City of Lancaster has escaped the cholera.

We have had some of it here during the summer, but not so much as to produce any serious alarm. I believe it has almost, if not altogether, disappeared.

Mr. Clay—my Secretary of Legation—has been very anxious to visit home during the approaching winter, & I have given him leave to go by the last Steam Boat for the season which will leave this to-morrow, Mr. Barry having agreed to officiate in his stead during his absence. He will be the bearer of Despatches, & intends to visit Lancaster. I hope you will favor me with a long letter by him & give me all the little news of the Town; for you have often said I was a great gossip.

I shall keep this letter open until I can ascertain whether I shall have time to write to Mr. Reynolds, so that if not, I may add a postscript intended for him. The truth is that at present I am very much occupied. A Tyro in diplomacy, I am compelled to encounter the most adroit & skilful politicians in the world, with no other weapons except a little practical common sense, knowledge & downright honesty. Should I fail, & I by no means despair of success, I wish to convince my Government that I have done my duty. It is probable that Mr. Clay will take no private letters from me to the United States, except for my mother & yourself. I need scarcely add that I have not time to write this over, & give it such a polish as an answer to your letter deserves. When you write, which I hope will be often, please to say nothing of Russia in your letters but what may be favorable, as the Post office here is not too secure. This caution however does not apply to that one with which I hope you will gratify me by Mr. Clay.

Please to remember me kindly to the whole family at the Wheatlands—to Mr. & Mrs. Reynolds & Miss Lydia & Dr. Sample—to my old friend Miss Mary Carpenter & to all others bearing that character whom you may meet. Wishing you Heaven's best blessings I remain ever

your faithful & devoted friend

James Buchanan.

Mrs. Jane Slaymaker.

P. S. Please to remember me to Mr. Amos Slaymaker & Henry & his wife. I hope Mr. Dickinson may ere this reaches you, be restored to his flock & have a son & heir to bless his marriage bed.

P. S. I shall not have time to write to Mr. Reynolds. Please

to deliver him the enclosed: & tell him that I have no Journal later than the 10 August, although my other papers have arrived up till the middle of September. You may also say to him, *but to him alone*, & caution him not to repeat it that the prospects of success in my mission, after many difficulties now begin to appear bright. I have received no letter from him lately. Mr. Clay will not leave this for a fortnight yet & I shall send this letter by another opportunity to London.

TO COUNT NESSELRODE.[1]

[Nov. 14–26, 1832.]

The Undersigned hastens to return to His Excellency the Vice Chancellor the pamphlets containing the commercial Treaties of the United States with Prussia and Austria.

The articles of these Treaties omitted in the projet furnished by His Excellency, and to which the Undersigned had the honor of directing his attention at their interview this morning, are the Fifth, the Eighth and the Ninth. He deems it unnecessary, after their full and free conversation, to add any thing at present in relation to these Articles.

The Undersigned still indulges the hope, that His Excellency may yet be willing to abandon the exception contained in the second article of his projet; and thus assimilate it to the corresponding Articles in the Treaties of the United States with Prussia, Austria and other Nations. This he desires much more for the sake of the appearance than the reality; because in those ports of the Empire with which American vessels now trade, or may probably trade hereafter, he knows that the discriminations in favor of Russian vessels, even where any such exist, are so slight, that they cannot be an object of any importance. As there will probably be but little competition between the Navigation of the two Nations, in the long voyages which the vessels of the United States are compelled to make, he would, therefore, submit, whether it could do any possible injury to Russian Navigation to equalize these trifling charges.

Should His Excellency however be of a different opinion,

[1] Enclosure D, with despatch No. 9, from Mr. Buchanan to Mr. Livingston, December 20, 1832, infra, p. 271; MSS. Department of State.

then the Undersigned would propose the following substitute for the second Article of the projet.

ARTICLE II.

Russian vessels arriving, either laden or in ballast, in the ports of the United States of America; and reciprocally, vessels of the United States arriving, either laden or in ballast, in the ports of the Empire of Russia, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as National vessels coming from the same place, with respect to the duties of Tonnage. And it is hereby agreed between the High contracting parties, that with respect to Light house duties, pilotage, and port charges, as well as to the fees and perquisites of public officers, and all other duties and charges upon vessels, of whatever kind or denomination, levied in the name, or to the profit of the Government, the local authorities, or of any private establishment whatever, they shall reciprocally place each other upon the footing of the most favored Nations, with whom the respective parties have not, at the present time, subsisting Treaties, regulating such duties and charges, upon terms of mutual reciprocity.

The Undersigned would suggest the propriety of striking out the 10th Article from the projet, and substituting in it's stead, the separate Article in regard to Sweden and Norway, and the Grand Duchy of Finland, modified in such a manner as to embrace the particular relations between Russia and Prussia arising out of the accommodations granted by the latter to the commerce of the Kingdom of Poland, through the Port of Dantzick. The reason for this change he trusts he has already sufficiently explained.

The modification which the Undersigned proposes to the Eleventh Article of the projet is instead of "pendant quatre années, à compter du jour de l'echange des ratifications," to substitute the following words; from the day of the exchange of the ratifications thereof, until the first day of January in the year of our Lord One Thousand eight hundred and Forty, and if one year before that day, neither of the High Contracting parties shall have announced, by an official declaration, to the other, it's intention to arrest the operation of the said Treaty, it shall remain binding for one year beyond that time, and so on, until the expiration of the year which shall commence after a similar notification.

The Undersigned need not add that he shall be very happy at all times to wait upon His Excellency, for the purpose of affording any additional explanations which he may require. He begs to offer to His Excellency Count Nesselrode the renewed assurance of his most distinguished consideration.

St. Petersburg, November 14/26 1832.

James Buchanan.

French translations of Art. 2 as proposed by Mr. Buchanan and of Art. XI, and the Separate Article as amended by his suggestion.[1]

Rédaction proposée par Mr. Buchanan.

G. No. 1.

Article II.

Les bâtimens Russes arrivant sur lest ou chargés dans les ports des Etats-Unis d'Amérique; et reciproquement les bâtimens des Etats-Unis arrivant sur lest ou chargés dans les ports de l'Empire de Russie, seront traités a leur entrée, pendant leur séjour, et a leur sortie, sur le même pied que les bâtimens nationaux venant du même lieu, par rapport aux droits de tonnage. Pour ce qui concerne les droits de fanaux, de pilotage et de port, ainsi que les vacations des officiers publics, et tout autre droit ou charge, de quelque espèce, ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales ou d'établissemens particuliers quelconques, les hautes parties contractantes se traiteront réciproquement sur le pied des nations les plus favorisées, avec lesquelles elles n'auraient pas conclu de traité actuellement en vigueur qui réglât ces dits droits et charges sur la bâse d'une entière réciprocité.

(G. 2.)

Article XI.

Le present Traité dont l'effet s'étendra également au Royaume de Pologne pour autant qu'il peut lui être applicable, restera en vigueur jusqu'au 11. Janvier de l'an de grâce 1839, et si, un an avant ce terme, l'une des hautes parties contractantes, n'avait pas annoncé à l'autre, par une notification officielle, son intention d'en faire cesser l'effet, ce Traité restera obligatoire une année au-delà et ainsi de suite jusqu'à l'expiration des douze mois, qui suivront une semblable notification.

(G. 3.)

Article Séparé.

Des rapports de voisinage et des engagemens antérieures ayant mis le Gouvernement Impérial dans le cas de régler les relations commerciales de la Russie avec la Prusse et les Royaumes de Suède et de Norvège par des stipulations spéciales actuellement en vigueur, et qui pourront être renouvelées

[1] Enclosure G, with despatch No. 9, from Mr. Buchanan to Mr. Livingston, December 20, 1832, infra, p. 271; MSS. Department of State.

dans la suite, sans que les dites stipulations soient liées aux règlemens éxistans pour le commerce étranger en général, les deux hautes parties contractantes, voulant écarter de leurs relations commerciales toute espèce d'équivoque ou de motif de discussion, sont tombés d'accord que ces stipulations, ainsi que les règlemens de navigation qui en résultent, et les avantages spéciaux accordés dans l'Empire de Russie au commerce de la Prusse, de la Suède et de la Norvège, motivés par des avantages équivalens accordés dans ces pays, d'une part au commerce du Royaume de Pologne, de l'autre à celui du Grand-Duché de Finlande, ne pourront dans aucun cas être applicables aux relations de commerce et de navigation sanctionnées entre les deux hautes parties contractantes par le présent traité.

Le présent article séparé, &c. &c.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 9.)

St. Petersburg 20 December 1832. N. S.

Sir/

I have now the pleasure of transmitting to you, by Mr. Clay, a Treaty of Commerce & Navigation which was signed on Tuesday last the 18th Instant, between the United States & Russia by Count Nesselrode & myself. I congratulate the President, that after the many fruitless attempts which have been made by our Government to conclude such a Treaty, it has at last been accomplished.

Like yourself, I confess, I did not entertain sanguine hopes of success when I left Washington. The Despatch of Mr. Randolph upon this subject was indeed very discouraging. The difficulties in prospect, however, served only to inspire me with a stronger resolution to accomplish, if practicable, the wishes of the President. This I trust has been done without the slightest sacrifice, in my person, of either the dignity or honor of the Country. Should my conduct throughout this difficult, and in some respects extraordinary negotiation, receive his approbation & that of the Senate, I shall be amply compensated for my labors.

I shall now proceed, according to my instructions, to complete the history of the negotiation, up till the time of it's successful termination.

From the date of my Despatch of the 19/31. of October,

[1] MSS. Department of State. Extracts from this despatch are inaccurately printed in Curtis's Buchanan, I. 171–172, 169–171.

until Wednesday the 21st ultimo, nothing had occurred relative to the negotiation with this Government worthy of repetition. On that evening I met Count Nesselrode at a party. He took me aside and said, he believed he was then ready for me, and proposed to send me, on Friday, the Projet of a Treaty of Commerce, which should be founded upon the provisions of our Treaties with Prussia, Sweden and Austria. To this course I readily assented.

Late on Saturday evening I received this projet, accompanied by a note requesting that I might call upon him on Monday afternoon, (the 26th ultimo) for the purpose of communicating such observations as the perusal of it should have suggested. (Vide. Doc. A & B.[1])

Accordingly I repaired to the Foreign Office at the time appointed, and we soon after proceeded to business.

To the first Article of his projet I gave my assent.

To the exception in favor of Russian Navigation, annexed to the second, I objected; and expressed a hope that he might yet consent to waive this exception altogether; and thus make the Treaty conform with those between the United States and other Nations. It could be of but little importance for Russia to preserve it, as at the present moment, no discrimination whatever existed in favor of national vessels in the Port of St. Petersburg, and the amount of the difference in their favor at the Port of Odessa did not exceed 25. paper roobles (equal to $5.) on a vessel of one hundred lasts, or two hundred tons burthen. For the sake of the appearance, then, more than the reality, it was desirable that a perfect reciprocity might be established.

He replied, that the only Ports of the Empire, which presented any serious obstacle to such an arrangement, were those of the three Baltic Provinces, (Courland, Livonia and Esthonia,) which had been conquered by Peter the first. These Ports had, ever since their conquest, preserved some ancient privileges in regard to Port charges, with which, although of trifling amount, the Government did not think it proper, at the present moment, to interfere. I then observed, that as American vessels had little or no trade with any of these ports, such a change in the Projet could interfere with their privileges, but in a very small degree.

He now requested me to suggest the modification which I would propose to this Article, in case he found it impossible to

[1] Doc. B is annexed to this despatch, infra, p. 289.

waive the exception altogether. I told him it would consist in giving the Article a form of entire equality between the two Nations. To produce this effect, it would only be necessary to confine the reciprocity, contained in the first part of it, to the duties on Tonnage, and leave the other charges to rest upon the regulations observed mutually by each of the contracting parties towards the most favored Nations. To this modification, he admitted, there could be no objection.

We then passed over the third and fourth Articles, to both of which I assented.

You will observe that the Fifth, the Eighth and the Ninth Articles of our treaties with Prussia and Austria had been omitted in the Projet. The omission of the Fifth afforded an occasion, which I eagerly embraced, of presenting to Count Nesselrode, somewhat in detail, the great advantages which Russia derived from her commerce with the United States. This was done from a conviction, that until since my arrival, he had devoted but little attention to the subject; and that his information was still confined rather to a vague impression of it's benefits, than any accurate knowledge of facts.

This Article stipulates, that the respective parties shall not impose higher duties upon the productions of each other, than upon similar productions of any other Nations; and it applies the same rule to prohibitions.

I expressed my surprise at the omission of this Article from the Projet; because if I were not greatly mistaken, it was that very one of the whole Treaty, in which Russia had the deepest interest. Whilst the United States received a very large amount of her productions, she took comparatively none of theirs in exchange. To illustrate this position, I referred to the Treasury Report for the year ending on the 30 September 1830, the last in the possession of this Legation; from which it appeared, that whilst the value of our domestic Exports to Russia, during that year, was only $35,461; the value of theirs to the United States amounted to the sum of 1,621,809 dollars.

At this statement, he and Baron Brunnow, who was also present, expressed much surprise and were evidently highly pleased. He then asked me how so great a trade was conducted between the two Countries; to which I answered, chiefly by the employment our Navigation found in bringing Sugar and other West-India produce to St. Petersburg, and exporting Russian productions from thence to the United States. I told him we

did not complain of this trade; on the contrary it was of great value to our Navigation,—justly a favored and important interest, and the statement had been made merely for the purpose of impressing upon him, that if we enjoyed nearly all the benefits of the navigation, Russia was amply compensated by the advantages of the Commerce. He said it was true that the advantages of the Commerce belonged chiefly to them, and those of the Navigation to the United States. I replied it was thus that both Nations were so deeply interested in the preservation and extension of the trade.

He expressed a desire to learn what were the articles of American production imported into Russia. I then read him a list of them, with their respective values, as contained in the Report to which I have referred.

At the article of Cotton, of which there was only 111,376. lbs, I observed I was glad to learn from our Consul in this City, that its importation had considerably increased, during the past and present Seasons. It was a production, the extended disposal of which in foreign markets was justly an object of lively solicitude, both to the Government and people of the United States. I indulged a hope, therefore, from the protection which Russia afforded to domestic manufactures, it's importation might rapidly increase, and thus lessen in some degree the great inequality which at present existed, in the exchange of native productions between the two Countries. He replied, with some earnestness, that he sincerely hoped this might be the case, and he believed it would.—(The American system prevails to an extent in this Country of which it's distinguished author would not approve. I have had occasion, notwithstanding, to observe, that whilst they are very partial to it at home, they condemn it when applied to the United States.)

The cotton imported in American vessels into the port of St. Petersburg amounted to 922,530 lbs, during the last, and 860,324 lbs, the present year.

I then exhibited to him a document which I assured him had astonished me very much. It proved that the vessels of the United States, during a succession of six years, ending with 1831, had carried away more than two thirds of all the manufactures of Russia which were exported from St. Petersburg, with the exception of Bar iron; and of this article, they took more than the half. (I shall transmit you a copy of this Document which was furnished me by our excellent Consul in this

City.) After I had read and explained it to him, he expressed his surprise at the result, and observed to Baron Brunnow that the trade was indeed very valuable. I then added that he might now judge whether I could have anticipated the omission of an Article from his Projet, which would prevent the United States, in case they should be so disposed, from giving a preference to the same productions of any other Nation, over those of Russia; when the productions of the latter which would receive it's protection were of more than forty five times the value of ours, for which a similar protection was the only equivalent.

He replied promptly, that he could himself scarcely tell why this Article had been omitted in the Projet, there could be no good reason for it: and he remarked to Baron Brunnow, "this article ought certainly to be inserted."

I then assented in succession to the 5th, 6th, 7th, 8th, and 9th Articles of the Projet.

When we reached the 10th, I stated that probably I did not understand it perfectly, which might arise from my want of a familiar acquaintance with the French language; but if I were not mistaken in its meaning, it was liable to serious objection. I proposed, however, that for the present, with his permission, we should pass it over and proceed to the Eleventh. This being granted, I expressed my sorrow that he had limited the duration of the Treaty to so short a period as four years. He replied, if it should be found beneficial to both parties, as he believed it would, it might afterwards be extended. I observed it could not now reach the United States, and receive the assent of the Senate, before the middle of February. It's final ratification would thus be protracted until so near the approach of Spring, that the publication of it would be too late to afford any great impulse to our trade in the Russian Ports, during the next Season; and afterwards it would have but three remaining years of efficient existence. Besides, it would be more convenient that it should terminate early in the Winter, after our vessels engaged in the trade should have returned to their Country, than whilst they were proceeding on their voyages. I therefore proposed that the Treaty should continue in force until the first day of January 1839, or 1840. After a moment's reflection, he consented to the first proposition; but said he could not agree to the second, until he had first consulted Count Canerene. I then proposed to annex to this Article a stipulation similar to those with Prussia and Austria, continuing the Treaty in force from year to year, after

the period fixed for it's termination, unless one year's notice should previously be given by either party, of their intention to arrest it's operation: to which he assented without any hesitation, adding that he believed it would be perpetual. After expressing a hope that it might be so, we passed on to the Separate article.

I observed it did not appear to me there was any necessity to make this a separate Article. I presumed the reason why it had been done in treating with Sweden was, the uncertainty which might then have existed, whether the President and Senate would sanction an Article which was, in some degree at least, a departure from the principles of equal reciprocity on which we concluded our Treaties; but as they had already decided the question in favor of Sweden, I had no reason to doubt their willingness to apply the same rule to Russia. He replied, surely they will do for Russia what they have done for Sweden.

He said he would now state the reason why he had omitted to insert the 9th Article of our Treaties with Prussia and Austria in his Projet. The foreign commerce of Poland, he observed, from the position of that country, must be carried on through the Prussian port of Dantzig; and in order to obtain this privilege upon favorable terms, they had been obliged to grant to Prussian vessels some advantages in the Ports of Russia, as an equivalent. That they were, therefore, unwilling to enter into any stipulations with a third Power which might embarrass them in this respect. He added they had no Treaties of Commerce with any Nation, except Prussia and Sweden; and ours would be the third; & in negotiating with the latter Power they had been embarrassed in consequence of the ancient connexion of the three Baltic Provinces of the Empire and the Grand Duchy of Finland with that Kingdom. They were unwilling to destroy the commercial privileges which those Provinces had enjoyed in the Ports of Sweden, ever since the time they formed a part of the same Nation. Besides, this exception was of no importance to the Commerce of the United States. These were the reasons why the 9th Article of our Treaties with Prussia and Austria had been omitted, and the 10th Article of the Projet inserted.

I admitted there was much force in his remarks; but if I understood the 10th Article of the Projet, it's present unrestricted terms would extend beyond the purpose for which it was intended, and permit either party to grant special commercial privileges hereafter to all other Nations, without any violation

of the Treaty. He said if this were the case, it must be changed; and then sent for Baron Sacken who produced the Treaty between Russia and Sweden, in which a similar Article had been inserted, for the purpose, as they alleged, of excepting from it's operation the stipulations into which they had entered with Prussia. I replied that this had no doubt been the intention; but it was obvious that the words might bear a much more extended construction: to which he seemed to assent.

I remarked that the insertion of the Separate Article of the Projet—relative to the trade with Sweden, would of itself be sufficient to remove every difficulty, which might arise, so far as their Treaty with that Power was concerned. In regard to Prussia; it appeared to me the 9th article which I proposed to insert could not interfere with the grant of such commercial privileges as he had described, growing out of the peculiar relations which nature had established between the Port of Dantzig and the Kingdom of Poland. This Article merely provided, that in case either of the parties should hereafter grant particular favors in navigation or commerce to a third Power,—these should immediately become common to the other, freely if they had been freely granted, or on yielding the same compensation if the grant had been conditional. Now as it was impossible from the nature of things, that the United States could afford to the Kingdom of Poland the use of one of their ports for conducting it's foreign commerce, American vessels could never claim the same privileges which had been yielded to Prussia as an equivalent for this advantage. This was probably the view taken of the subject by Prussia, when she concluded her commercial Treaty with the United States, as it contained no allusion whatever to her Treaty with Russia. Besides, I said, that this exception in regard to Prussia might if necessary be embodied in the Article which related to Sweden, and, thus every difficulty be removed.

He said there was much force in these remarks, he would take them into consideration and had no doubt such an Article might be framed as would be satisfactory to both parties.

I then adverted to the omission in his Projet of the 8th Article of our Treaties with Prussia and Austria; and observed that this Article was perhaps only important for the purpose of making the provisions of the Treaty more specific; but I should be pleased to have it inserted if it were only for the sake of uniformity.

He then requested that I might return him the pamphlets

containing our Treaties with Prussia and Austria, accompanied by such modifications to his Projet as I had proposed:—which I did on the same evening. A copy of my note to him will accompany this Despatch.[1]

On my departure he followed me to the outer door, and said he had no doubt the Treaty could be concluded during the present week.

In the course of our conversation, I expressed a desire to obtain a copy of the Treaty between Russia and Sweden, which he promptly furnished me. I shall transmit it herewith. In glancing your eye over it's provisions, you will perceive that they are fairly described in the Projet, and contain nothing which can be injurious to the commerce or navigation of the United States.

In the course of this interview I received the impression, that they had at length become as anxious to conclude the Treaty, as we seem to have been for the last twenty years.

Instead of concluding the Treaty within the week, nearly two had elapsed without hearing from Count Nesselrode, when on the 9th instant I addressed him a note requesting an interview the next day. (Monday) On Monday afternoon I received his answer appointing Tuesday; and on Tuesday this appointment was countermanded and Wednesday named.

When we met on Wednesday (12th) I informed him, that Congress would rise on the 3d March next; and if the Treaty were not speedily concluded it could not be submitted to the Senate during their present Session: besides, Mr. Clay who had been detained here since the departure of the last Steam Boat for the purpose of carrying it home, was now becoming impatient.

He replied that he was then ready to give me an answer to the propositions contained in my last Note. Without entering upon a fatiguing repetition of our conversation, it will be sufficient to inform you that he agreed to adopt the second Article proposed by myself as a substitute for the second Article of his Projet, and to insert the fifth and ninth articles of our Treaties with Prussia and Austria. He also consented to the modification which I had proposed to his eleventh Article, except that the first of January 1839, was substituted instead of the first of January 1840.

He objected to the 8th Article of our Treaties with Prussia and Austria, and said, if inserted, it would prevent the Imperial

[1] Supra, p. 268.

Government from sending any Russian vessel to a foreign country for articles required for the public service; and although ever since he had been connected with the Imperial Ministry they had availed themselves of this expedient but on one occasion and probably might never do so again, yet he did not like the idea of restricting themselves from the exercise of this power in case circumstances should render it necessary. On this occasion they had, many years ago, sent some vessels to Portugal for salt. I attempted in vain to convince him that the adoption of this Article would not interfere with the exercise of such a right; he was unwilling to be convinced, and not deeming it very material I did not further insist upon it's insertion.

He afterwards observed, with my consent, he would prefer that the Article excepting their special engagements with Prussia and Sweden from the operation of the Treaty should, after the example of our Treaty with the latter Power, be a Separate Article; to which I assented without hesitation. He then exhibited to me a new Projet of an Article upon this subject, in which Austria was also embraced. I remarked that this was entirely new to me, and asked him into what stipulations they had entered with that Power inconsistent with the provisions of the proposed Treaty. He said their Treaty with Austria granted some privileges to Austrian boats coming down the Danube into the Black Sea. I enquired whether Austrian vessels coming from Trieste or any other Austrian Port by Sea into any of the Ports of Russia enjoyed privileges which the United States would not possess by virtue of the proposed Treaty. He replied certainly not.

When he proposed to introduce Austria into this Article, I determined to take a stand against it; supposing it possible that under colour of this exception privileges might hereafter be granted to that Power prejudicial to the navigation of the United States. We had a long conversation upon the subject, in which I used some pleasantry with the idea that it was necessary to except a river navigation between two Nations, the one possessing the source—and the other the outlet of the stream, from the terms of a general Treaty relating to the commerce by Sea between two Nations so far distant from each other as the United States and Russia. He defended his proposition by urging the necessity, and expressing the desire, of mentioning every thing in the Treaty out of which any discussions between the two countries could possibly arise. At length he consented

to strike out Austria from this Projet and it was erased in my presence.

I waived a final answer in relation to the exception in favor of Prussia, until I should examine the Treaty between Russia and that Power; with which he promptly furnished me. It shall be transmitted to you with this Despatch.

Before my departure he said he would send me immediately copies in French of the 2d Article proposed by myself, and of the eleventh Article of his Projet modified in the manner I had suggested and a copy of the Separate Article according to this new Projet, and we then appointed the following day for our next meeting.

Copies of the three articles which I received, on the same evening will be forwarded to you with this Despatch.

About this time great preparations were in progress, for the grand fête of the Emperors birth day or more properly speaking his Saint's day, which was to be celebrated on Tuesday the 6/18 of December. I thought it might expedite the conclusion of the Treaty, and would not be unbecoming in an American Minister, to manifest a wish that it might be signed on that anniversary. Upon our meeting on Thursday, (the 13th) I expressed this desire, & accompanied it by some complimentary expressions. Count Nesselrode was evidently pleased with the proposition, & observed, it was a very agreeable suggestion, and my wish should be gratified if it were possible. He then asked Baron Sacken if he thought it practicable, who expressed a doubt; but the Count replied it must be done,—Mr. Clay could assist them, if necessary, in making the copies.

The expedition which they have manifested since this suggestion, compared with the delays which I had before experienced, has convinced me that I had not been mistaken in my anticipations.

Our interview on this occasion was very long, and the time was chiefly spent in reading over the amended French projet, article by article, & in the observations which arose out of different minute alterations proposed by both parties. All that passed between us of any importance, you will find embraced in the remarks which I shall hereafter make on the several articles of the Treaty.

At this interview Count Nesselrode agreed, without hesitation, to the "alternate" form of Treaty, observing it was the common practice of Europe; but proposed to follow the precedent

set by Mr. Middleton, of executing it solely in the French language. This proposition, however, was soon abandoned. Indeed, until he produced the original Treaty itself signed by Mr. Middleton, and assured me that no counter-part in English had ever been executed, I was not convinced of the correctness of his first impression in this particular.

On the next morning (Friday 14th) I received a copy of his amended French projet which was the same as the Treaty afterwards signed, with the exception of two unimportant changes, the first proposed by myself, & the other by Count Nesselrode. These changes gave rise to two notes on each side, which were respectively answered without any delay;—a rapidity unusual in Russian diplomacy. These four notes have been copied into the Record Book of the Legation; but it is deemed unnecessary to send you copies.

Late in the evening I transmitted to the Count an English translation of the Treaty. In this I have followed, so far as it was applicable, the English of our Treaty with Prussia, not that I deemed it either literal or elegant; but because it is substantially correct, and any departure from it which I might have proposed would only have afforded occasion for new difficulties & delays. Throughout the negotiation this Treaty with Prussia, both in the French & in the English, has been resorted to by the Count as a standard.

On Saturday (the 15th) I received a note from the Count, a translation of which I herewith furnish you, as follows;

> I hasten, Sir, to inform you that having taken, this evening, the definitive orders of His Majesty the Emperor, I find myself authorised to sign the Treaty of Commerce in the form we determined upon yesterday. There remains nothing more now to be done but to make the copies. For the purpose of regulating some points in relation thereto, I shall be so bold as to request you to receive tomorrow, between 1 & 2 O'Clock, the Baron Sacken who will have the honor of waiting upon you for that purpose.—— [For the original see Doc. H.]
>
> Will You Accept &c &c &c——
>
> NESSELRODE.

On our interview the next day, the Baron informed me that the English translation of the Treaty was satisfactory to Count Nesselrode, who proposed that it should be signed at two O'Clock on Tuesday, after the morning Levee of the Emperor. We then agreed, for the purpose of expediting the business, that whilst they were preparing one French copy at the Foreign Office, we

should prepare an English copy at the American Legation; & that after these were exchanged, they should annex the French to the English copy furnished by us, whilst we were annexing the English to the French copy furnished by them. The whole was completed & the Treaty prepared for Signature on Monday evening, (the 17th)

On Tuesday morning (the 18th) we went to the Emperor's levée; and on this occasion a singular occurrence took place in relation to the Treaty.

The strictest secrecy had been preserved throughout the negotiation. Indeed I do not believe an individual, except those immediately concerned, had the least idea that negotiations were even pending. A rumor of the refusal of this Government to make the Treaty had circulated two months ago; and I was then repeatedly informed in conversation, that it was in vain for any nation to attempt to conclude a Treaty of Commerce with the Russian Government, whilst Count Cancrene continued to be Minister of Finance. Count Nesselrode had on one occasion intimated a desire that the British Government should not obtain a knowledge that negotiations were proceeding; and this was an additional reason on our part for observing the greatest caution. It ought to be remarked, however, that this intimation was given before information had reached St. Petersburg of the conclusion of the late Treaty between France & England in relation to the Belgian question.

The Diplomatic Corps, according to the etiquette were arranged in a line to receive the Emperor and Empress, and Mr. Bligh, the English Minister, occupied the station immediately below myself. You may judge of my astonishment when the Emperor accosting me in French, in a tone of voice which could be heard by all around, said, "I signed the order yesterday that the Treaty should be executed according to your wishes:" & then immediately turning to Mr. Bligh asked him to become the interpreter of this information. He is a most amiable man, and his astonishment and embarrassment were so striking, that I felt for him most sincerely. This incident has already given rise to considerable speculation among the knowing ones of St. Petersburg; probably much more than it deserves.

I ought to remark, that when I was presented to the Emperor I understood but little, I might almost say, no French; and there was then an interpreter present. Supposing this still to be the case he must have thought that an interpreter was necessary;—

and he was correct to a certain extent, for I have not yet had sufficient practice to attempt to speak French in the presence of the whole Court. I trust this may not long be the case: but I still more ardently hope I may not very long continue in a situation, where it will be necessary to speak that language.

There can be no doubt but all that occurred was designed on the part of the Emperor; and what must have rendered it still more embarrassing to Mr. Bligh was, that one object of Lord Durham's mission is understood to have been the conclusion of a commercial Treaty with Russia.

After the Emperor had retired, Mr. Bligh, in manifest confusion, told me he feared he had been a very bad interpreter and asked me what kind of a Treaty we had been concluding with Russia; to which I replied, it was a Treaty of Commerce.

Count Nesselrode was not present at the moment and from his manner when I informed him of this incident, I believe he had not previously received any intimation of the Emperor's intention to make such a disclosure.

The Count and myself afterwards proceeded from the Palace to the Foreign Office and there signed the Treaty. The only persons present were Baron Brunnow and Baron Sacken.

On this occasion but little worthy of repetition occurred. They all exhibited the greatest cordiality and good will and the Count emphatically declared that he believed we had that day completed a work which would result in benefits to both nations.

On taking my leave, I expressed no more than I felt, in thanking him for his kind and candid conduct throughout the whole negotiation; and he paid me some compliments in return.

I shall now proceed to make some remarks on the Treaty.

The first Article is similar to that of our Treaty with Prussia.

The second Article, like the same one in that Treaty, provides for a perfect reciprocity, so far as Tonnage duties are concerned, and places Light House duties and other Port charges upon the footing of the most favored nations, with whom the parties have not, at the present time, subsisting Treaties regulating them upon terms of entire reciprocity.

This last qualification was inserted for the purpose of reserving to the United States the power of levying the discriminating Light House duty of Fifty cents per ton on Russian vessels, should such a measure be deemed expedient. It was confined to Treaties *now existing*, to deprive Russia of any pretext for

granting favors of this kind hereafter which American vessels should not enjoy.

If Russian vessels had any portion of the carrying trade between the two countries, this discrimination would much more than counterbalance all the trifling advantages which they possess in their own Ports; and this Government might thus be brought to terms of entire reciprocity. The excess of Light House duties which a single Russian vessel would then be compelled to pay in an American Port would more than ten times exceed the discriminations against an American vessel of the same burthen in the Port of Odessa;—the only one in the Empire, with which we shall probably have much intercourse, where any discriminations exist. I should not, however, advise the adoption of such a measure, because it is certain, that so far as Navigation is concerned, no reciprocity can exist between the two Countries, except upon paper. In this respect the treaty is solely for the benefit of the United States.

In the Ports of St. Petersburg and Archangel, no discriminating duties exist against our vessels. In that of Odessa, the Tonnage and Light House duties and all other charges upon an American vessel of 100 Lasts or nearly 200 tons burthen amount only to 235. paper Roobles and 20 Kopeks, or 47. dollars of our money; whilst the similar charges upon a Russian vessel of the same burthen are 160 Roobles and 20 Kopeks or 32 dollars. If I correctly understand the report of our consul at this port, made to the Department in November 1831, the present Treaty will reduce this discrimination from 15 to 5 dollars on such a vessel.

At the Port of Taganrock, on the sea of Asoph, all the charges on an American vessel of the same burthen amount to 153 Roobles 50 Kopeks, and on a Russian vessel to 90 Roobles and 50 Kopeks. Under the operation of the Treaty, this difference will be reduced to 45 Roobles or 9 Dollars.

You may test the accuracy of these statements, by referring to the Reports of Mr. Ralli and Mr. Schielin for the year 1831.

Slight as these discriminations appear, I used every exertion in my power to have them abolished. At our interview on Thursday last, I made another attempt for this purpose. I told Count Nesselrode that the commercial relations between the two Nations were of such a character, that whatever would extend them must necessarily be beneficial to both parties. Nothing was better calculated to promote commerce, than to assure the

merchant that his vessel, in proceeding to a Foreign Country, would be placed upon the same footing as national vessels. Our merchants were a very intelligent class, and before they made adventures to so distant a region as the shore of the Black Sea, they would carefully examine this Treaty, where they would find a list of different charges in regard to which a discrimination existed in favor of Russian vessels. From the face of the Treaty they could never suppose that these discriminations, which appeared so formidable upon paper, were so trifling in reality. That the alteration of a single additional vessel to the ports of the Black Sea, and the sale of a single cargo of Russian produce would be more beneficial to the Empire than the whole amount of these slight discriminations for many years. Besides, it was not probable that much, if any, competition would exist between the vessels of the two Nations.

I observed that for the sake of attaining this entire equality in the other ports of the Empire, I was willing to sacrifice the principle of equal reciprocity on which we had concluded all our Treaties; and agree that the Ports of the Baltic Provinces, in which he had alleged the greatest obstacles existed should form an exception. For this purpose I proposed to adopt the Second Article in his original Projet, provided he would consent that the exception which it contained should be changed so as to read as follows: "Sont exceptés de cette stipulation les ports des provinces de la Baltique. Dans ces ports les bâtimens des Etats Unis seront traites, pour le payment de droits de tonnage, à l'égal des nationaux, et pour le payement des autres droits et charges, sur le pied des nations les plus favorisées."

To this proposition the Count intimated he would have no difficulty in acceding, if it depended solely upon himself. He observed it was very true from reading the Treaty no person could imagine, that all the discriminations in the Port of Odessa in favor of a Russian Vessel of 100 lasts burthen amounted to but 15. Roobles. He said, however, that to effect any change in this Article, to which Count Cancrene had at length acceded, he must again consult him, which would only produce new difficulties and delays.

He then urged, that the discriminations were so trifling they could not produce any effect, if we should publish in the United States, simultaneously with the Treaty, a correct statement of the charges to which Russian and American vessels would be respectively subjected in the Ports of the Black Sea and Sea of

Asoph. Dreading the effect of another reference to Count Cancrene, I did not insist further upon this proposition; but remarked that although I believed we had been furnished by our Consuls with a correct statement of these charges in the ports of Odessa and Taganrog; yet such a statement emanating from the Imperial Government would have much greater authority. He promptly replied, that he would procure me such an one as soon as possible; —before the departure of Mr. Clay if the information could be obtained in St. Petersburg, and if not, as soon as it could be procured from the Black Sea.

I had doubted for some time whether I ought to sacrifice the principle of equal reciprocity in the appearance of the Second Article as it now stands for the sake of the proposed alteration; and I still think it probable it's present form will be quite as acceptable to the President and the Senate.

The conclusion of this Treaty is a new era in Russian diplomacy; and it is to be hoped that the principles upon which it has been established will ere long induce this Government to abandon all these petty discriminations, as they have already done those relating to Tonnage duties.

The 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, & 13th Articles so nearly resemble the 3d, 4th, 6th, 5th, 7th, 10th, 11th, 14th, 9th, 15th, & 16th Articles of our Treaty with Prussia, as to render any comment upon them unnecessary. In relation to the 12th it may be proper merely to observe that it was thought advisable to make the termination of the Treaty, in any event, correspond with the end of the year.

Our Treaty with Sweden affords a precedent for the Separate Article.

At the interview on Thursday last, I endeavoured to have Prussia stricken out of this Article; and we had a long conversation on the subject. Among other things I observed to Count Nesselrode, that I had carefully examined their treaty with Prussia and was not able to discover any portion of it, out of which difficulties could possibly arise under the Treaty which they were about to conclude with the United States. This you will discover by merely casting your eye over the former.

The Count neither alleged the contrary, nor pointed out how it could be made applicable to their commerce with the United States.

I then asked him why insist upon inserting Prussia in the Separate Article, when it could have no other effect than to give

the Treaty an appearance of a want of reciprocity which did not exist in fact? He, at the first, wavered,—and afterwards as I thought assented to my wish; but at the last, he expressed a strong desire that I should not object to insert Prussia with Sweden, alleging that his only motive in making the request, was, to prevent all possible difficulties in the commercial relations between the United States and Russia.

When I found how strong his desire was to retain Prussia, I told him I could only yield to it upon one condition, which was, that the phraseology of the Article should be so changed, and it's terms so limited, as more clearly to describe the true nature of their existing stipulations with these two Powers. Judging from it's present form, one might suppose them to be very different from what they really were, and to contain privileges which did not exist.

My motive in making this proposition was to remove every pretext which they might have had hereafter for granting to either of those Powers any privileges prejudicial to the United States, and which are not contained in the present Treaties.

He replied that certainly these stipulations ought to be correctly described, and then taking up his pencil and proposing to make the very alterations which I was about to suggest, he asked me if I would be satisfied; to which I replied in the affirmative. By comparing the second projet of the Separate Article with the Treaty as concluded, you will readily discover the nature of this change.

The dependence of Poland for its foreign commerce upon Prussia might have justified Russia in granting privileges to the latter Power much greater than those contained in the Treaty between them.

It is my impression that this Government will reluctantly, if at all, renew their Treaty with Sweden. Whilst it exists, it will serve to remind the people of Finland that they lately formed a part of the Kingdom.

Upon the whole I am now quite as well satisfied that Prussia has been retained in the Separate Article.

Thus, Sir, you have in my different Despatches a faithful history of the whole progress of the negotiation up to its termination. Independently of the positive advantages secured to our commerce by the Treaty, and of the stipulation prohibiting Russia from granting favors to any other nation at our expense, there is another consideration which deserves attention.

I think I cannot be mistaken in asserting, that if the feelings of the Russians towards our Country in the days of the Emperor Alexander were of a kindly character, which I have no reason to doubt, they have undergone some change since the accession of his present Majesty. In a future despatch I may probably state my reasons for this impression. The very fact, however, of concluding the present Treaty, and thus distinguishing us from other commercial Nations, connected with the time and manner in which His Majesty thought proper to announce it, will have a powerful influence favorable to our Country among the members of a Court where every look and every word of the Emperor is noted and observed almost as if he were a Divinity. I may say that I have already experienced a change. Even Count Cancrene in a conversation with Baron Stieglitz of this city has expressed his assent to the Treaty, observing at the same time that the United States formed an exception to his general principles on this subject. He added a compliment to myself of such a character as I know I do not deserve, and therefore I shall not repeat.

The Baron Stieglitz to whom I have just alluded is at the head of a mercantile Firm in this City. In point of wealth he is the Girard among the merchants of Russia, and has been created a Baron by the present Emperor. He is the Court Banker and high in favor with both the Minister of Finance and Count Nesselrode. With the latter he is connected in large estates on the Black Sea. The American business of his House is much greater than that of any other in St. Petersburg, and he has made a large commercial establishment in Odessa at the reiterated request of the Emperor. Besides he is a man of information and has a decided partiality for our country.

Believing that he would be consulted by Count Nesselrode on the subject of the Treaty I took occasion through a gentleman of Boston then in this City who possessed my entire confidence to prepare him for such an interview without informing him of the object. This my friend accomplished with much skill, as I discovered a fortnight ago when the Baron introduced the subject to me and related a conversation between Count Nesselrode and himself.

You may ask what is the object of all this? I answer that Stieglitz and Co ought, in my opinion, to be made Bankers of the United States. A citizen of our Country who values such things only for what they are worth can have no adequate idea

how much these people are flattered by titles or distinctions of any kind. This appointment, though in a pecuniary point of view it would not be of the least importance to the Baron, might be productive of considerable advantages to the Commerce of the United States. It would enlist his feelings still more strongly in favor of the merchants of our Country, and in case of necessity they would find in him a powerful friend with this Government.

I have sounded him upon the subject without committing myself and found the appointment would be highly flattering.

I have drawn on our Bankers in Amsterdam for the sum of 2000 guilders and advanced the proceeds to Mr. Clay. He will keep a regular account of his expenses to the United States which he will settle with the fifth Auditor. Should any balance of this sum remain in his hands, it may be charged to him in the settlement of his accounts.

The appearance of this despatch will be sufficient to convince you that it has been prepared in haste. This has been occasioned by the apprehension, that unless Mr. Clay should start to day he could not reach Liverpool in time for the packet of the 8th of January and thus the Treaty might arrive too late in the United States to be submitted to the Senate during their present Session.

With sentiments of great respect I remain Your Obdt. Servt.

JAMES BUCHANAN.

TO THE HONORABLE
EDWARD LIVINGSTON
Secretary of State.

(Despatch No. 9, Doc. B.)

Projet d'un Traité de Commerce et de Navigation entre la Russie et les Etats-Unis d'Amérique.

Au nom de la très-sainte et indivisible Trinité,

Sa Majesté L'Empereur de toutes les Russies et les Etats-Unis d'Amérique, également animés du désir de maintenir les rapports de bonne intelligence qui ont si heureusement subsisté jusqu'ici entre leurs Etats respectifs, et d'en étendre et consolider les relations commerciales, sont convenus d'entrer en négotiation pour conclure un traité de commerce et de navigation. A cet effet, Sa Majesté L'Empereur de toutes les Russies a muni de Ses pleins-pouvoirs le Sr.....et le Président des Etats-Unis a muni des mêmes pouvoirs le Sr..... lesquels Plénipotentiaires, après avoir échangé leurs pleins-pouvoirs, trouvés en bonne et due forme, ont arrêté et signé les Articles suivans:

ARTICLE I.

Il y aura entre les territoires des hautes parties contractantes, liberté et réciprocité de commerce et de navigation. Les habitans de leurs Etats respectifs pourront réciproquement entrer dans les ports, places et rivières des territoires de chacune d'Elles, partout où le commerce étranger est permis. Ils seront libres de s'y arrêter et résider dans quelque partie que ce soit des dits territoires, pour y vaquer à leurs affaires; et ils jouiront à cet effet de la même sécurité et protection que les habitans du pays dans lequel ils résideront, à charge de se soumettre aux lois et ordonnances y établies et en particulier aux réglemens de commerce en vigueur.

ARTICLE II.

Les bâtimens Russes arrivant sur lest ou chargés dans les ports des Etats-Unis d'Amérique, et réciproquement, les bâtimens des Etats-Unis arrivant sur lest ou chargés dans les ports de l'Empire de Russie, seront traités tant à leur entrée qu'à leur sortie, à l'égal des nationaux, pour les droits de ports, de tonnage, de fanaux, de pilotage et de sauvetage, ainsi que pour tout autre droit ou charge, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales ou d'établissemens particuliers quelconques.

Sont exceptés de cette stipulation les ports de la province de la Baltique, ainsi que ceux de la mer Noire et de la mer d'Azoff. Dans ces ports, les bâtimens des Etats-Unis seront traités, pour le payement des droits et charges denommés ci-dessus, sur le pied des autres nations les plus favorisées.

ARTICLE III.

Toute espèce de marchandise et objets de commerce qui pourront légalement être importés dans les ports de l'Empire de Russie, sur des bâtimens Russes, pourront également y être importes sur des bâtimens des Etats-Unis d'Amérique sans payer d'autres ou de plus forts droits ou charges, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que s'ils étaient importes sur des bâtimens Russes. Et réciproquement toute espèce de marchandise et objets de commerce qui pourront légalement être importés dans les ports des Etats-Unis d'Amérique, sur les bâtimens des dits Etats, pourront également y être importés sur des bâtimens Russes, sans payer d'autres ou de plus forts droits ou charges de quelques espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales ou d'établissemens particuliers quelconques, que s'ils étaient importes sur des bâtimens des Etats-Unis d'Amérique.

ARTICLE IV.

Il est entendu que les stipulations contenues dans les deux articles précédens, sont dans toute leur plénitude applicables aux bâtimens Russes, et leur cargaisons arrivant dans les ports des Etats-Unis d'Amérique; et réciproquement aux bâtimens des dits Etats et leur cargaisons arrivant dans les ports de l'Empire de Russie, soit que les dits bâtimens viennent des ports du pays auquel ils appartiennent, soit de ceux de tout autre pays etranger.

ARTICLE V.

Toute espèce de marchandise et objets de commerce qui pourront être légalement importés des ports des Etats-Unis d'Amérique sur des bâtimens nationaux pourront également en être exportés sur des bâtimens Russes sans payer d'autres ni de plus forts droits ou charges de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que si ces mêmes marchandises ou denrées étaient exportées par des bâtimens des Etats-Unis d'Amérique. Et réciproquement, toute espèce de marchandise et objets de commerce qui pourront être légalement exportés des ports de l'Empire de Russie, sur des bâtimens nationaux pourront également en être exportés sur des bâtimens des Etats-Unis d'Amérique sans payer d'autres ou de plus forts droits ou charges de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que si ces marchandises ou denrées étaient exportées sur des bâtimens Russes.

ARTICLE VI.

Il est expressément entendu que les Articles précédens II, III, IV et V, ne sont point applicables à la navigation de côte ou cabotage de chacun de deux pays, que l'une ou l'autre des hautes parties contractantes se réservent exclusivement.

ARTICLE VII.

Les deux parties contractantes auront la faculté d'avoir dans leurs ports respectifs des Consuls, Vice-Consuls, Agens et Commissaires de leur choix, qui jouiront des mêmes privilèges et pouvoirs dont jouissent ceux des nations les plus favorisées; mais dans le cas où les dits Consuls veulent faire le commerce, ils seront soumis aux mêmes lois et usages auquels sont soumis les particuliers de leur nation à l'endroit où ils résident.

Les Consuls, Vice-Consuls et Agens commerciaux auront le droit comme tels, de servir de juges et d'arbitres dans les différends qui pourraient s'élever entre les Capitaines et les équipages des bâtimens de la nation dont ils soignent les intérêts, sans que les autorités locales puissent y intervenir, à moins que la conduite des équipages ou du capitaine ne troublât l'ordre ou la tranquillité du pays, ou que les dits Consuls, Vice-Consuls ou Agens Commerciaux ne réquissent leur intervention pour faire exécuter ou maintenir leurs décisions; bien entendu que cet espèce de jugement ou d'arbitrage ne saurait pourtant priver les parties contendantes du droit qu'elles ont, à leur retour, de recourir aux autorités judiciaires de leur pays.

ARTICLE VIII.

Les dits Consuls, Vice-Consuls ou Agens Commerciaux sont autorisés à requérir l'assistance des autorités locales pour la recherche, l'arrestation, la détention et l'emprisonnement des déserteurs des navires de guerre et marchands de leur pays; ils s'adresseront pour cet objet aux tribunaux, juges et officiers compétens, et réclameront, par écrit, les déserteurs susmentionnés, prouvant par la communication des régistres des navires, ou rôles de l'équipage, ou par d'autres documens officiels, que de tels individus ont fait partie des dits équipages; et cette réclamation ainsi prouvée, l'extradition ne sera point refusée.

De tels déserteurs, lorsqu'ils auront été arretés seront mis à la disposition des dits Consuls, Vice-Consuls ou Agens Commerciaux et pourront être enfermés dans les prisons publiques, à la réquisition et aux frais de ceux qui les réclament pour être détenus jusqu'au moment où ils seront rendus aux navires auxquels ils appartenaient, ou renvoyés dans leur patrie par un bâtiment de la même nation ou un autre bâtiment quelconque. Mais s'ils ne sont pas renvoyés dans l'espace de six mois à compter du jour de leur arrestation, ils seront mis en liberté, et ne seront plus arrêtés, pour la même cause.

Toutefois, si le déserteur se trouvait avoir commis quelque crime ou délit, il pourra être sursis à son extradition, jusqu'à ce que le tribunal, nanti de l'affaire, aura rendu sa sentence, et que celle-ci ait reçu son éxécution.

ARTICLE IX.

Les citoyens et sujets de chacune des hautes parties contractantes auront dans les Etats de l'autre, la liberté de disposer de leurs biens personnels soit par testament, donation ou autrement; et leurs héritiers, étant sujets ou citoyens de l'autre partie contractante, succèderont à leurs biens soit en vertu d'un testament, soit *ab intestato*, et ils pourront en prendre possession, soit en personne, soit par d'autres agissant en leur place, et en disposeront à volonté, en ne payant à titre de détraction, au profit des Gouvernemens respectifs, d'autres droits que ceux auxquels les habitans du pays où se trouvent les dits biens, sont assujettis en pareille occasion. En cas d'absence des héritiers, on prendra provisoirement des dits biens les mêmes soins qu'on aurait pris en pareille occasion des biens des natifs du même pays, jusqu'à ce que le propriétaire légitime ait pris des arrangemens pour recueillir l'héritage. S'il s'élève des contestations entre le différens prétendans ayant droit à la succession, elles seront décidées en dernier ressort, selon les lois et par les juges du pays où la succession est vacante. Et si par la mort de quelque personne possèdant des biens-fonds sur le territoire de l'une des hautes parties contractantes, ces biens-fonds venaient à passer, selon les lois du pays, à un citoyen ou sujet de l'autre partie et que celui-ci, par sa qualité d'étranger, fut inhabile à la possèder, il jouira du délai fixé par les lois du pays pour les vendre et pour en retirer et exporter le produit sans obstacle et exempt de tout droit de détraction quelconque de la part ou au profit des Gouvernemens respectifs. Mais cet Article ne dérogera en aucune manière à la force des lois qui ont déja été publiées ou qui pourraient l'être par la suite par Sa Majesté l'Empereur de toutes les Russies, pour prévenir l'émigration de Ses sujets.

ARTICLE X.

Ne pourront être invoquées les stipulations énoncées dans les conventions particulières conclues ou à conclure de part et d'autre avec une puissance tierce, et par lesquelles il aurait ou serait concédé quelque avantage spécial, pour l'importation ou l'exportation de certaines marchandises déterminées.

ARTICLE XI.

Le present traité dont l'effet s'étendra également au Royaume de Pologne, pour autant qu'il peut lui être applicable, restera en vigueur pendant quatre années, à compter du jour de l'échange des ratifications.

ARTICLE XII.

Le présent traité sera approuvé et ratifié par Sa Majesté L'Empereur de toutes les Russies et par le Président des Etats-Unis d'Amérique par, et avec l'avis et le consentiment du Sénat des dits Etats; et les ratifications en seront échangées en la ville de.....dans l'espace de.....mois ou plutôt si faire se peut.

En foi de quoi les Plénipotentiaires respectifs ont signé le present traité en duplicata et y ont apposé le cachet de leurs armes. Fait à.....le .....l'an de grâce.

ARTICLE SÉPARÉ.

Des rapports de proximité et d'anciennes relations, ayant fait règler l'importation des productions du Grand-Duché de Finlande dans les Royaumes de Suède et de Norvège, et celles des productions des dits Royaumes, dans le Grand-Duché de Finlande, sur les bâtimens des pays respectifs, par des stipulations spéciales d'un traité actuellement en vigueur, sans que les dits stipulations soient liées aux règlemens existans pour le commerce étranger en général, les deux hautes parties contractantes, voulant écarter de leurs relations commerciales toute espèce d'équivoque, ou de motif de discussion, sont tombées d'accord, que le traité relatif au commerce susmentionné, ainsi que les règlemens de navigation qui en résultent, et les avantages spéciaux qui sont donnés à l'importation de plusieurs articles de productions Suèdoise et Norvègienne, motivés par des avantages équivalens accordés en Suède et en Norvège à des articles de production Russe ne pourront dans aucun cas, être applicables aux relations de commerce et de navigation, sanctionnées entre les deux hautes parties contractantes par le présent traité.

Le présent Article séparé aura la même force et valeur que s'il était inséré mot-à-mot dans le traité signé aujourd'hui et sera ratifié en même tems.

En foi de quoi, nous Soussignés, en vertu de nos pleins-pouvoirs respectifs, avons signé le présent Article séparé et y avons apposé le cachet de nos armes.

Fait à.....le.....

TREATY OF COMMERCE AND NAVIGATION.[1]

[*Concluded December 18, 1832; ratifications exchanged at Washington May 11, 1833; proclaimed May 11, 1833.*]

In the name of the most Holy and Indivisible Trinity.

The United States of America and His Majesty the Emperor of all the Russias, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, and of extending and consolidating the commercial

[1] Enclosure A, with despatch No. 9, from Mr. Buchanan to Mr. Livingston, December 20, 1832, supra, p. 271; MSS. Department of State. Printed, also, in Treaties and Conventions between the United States and Other Powers, pp. 933–937.

intercourse between them, have agreed to enter into negotiations for the conclusion of a treaty of navigation and commerce; for which purpose the President of the United States has conferred full powers on James Buchanan, their Envoy Extraordinary and Minister Plenipotentiary near His Imperial Majesty; and His Majesty the Emperor of all the Russias has conferred like powers on the Sieur Charles Robert Count de Nesselrode, his Vice Chancellor, Knight of the Orders of Russia, and of many others, &c.:

And the said Plenipotentiaries, having exchanged their full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I.

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

ARTICLE II.

Russian vessels arriving either laden or in ballast in the ports of the United States of America, and reciprocally vessels of the United States arriving either laden or in ballast in the ports of the Empire of Russia, shall be treated, on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage. In regard to light house duties, pilotage, and port charges, as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied upon vessels of commerce, in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, the high contracting parties shall reciprocally treat each other upon the footing of the most favored nations with whom they have not treaties now actually in force, regulating the said duties and charges on the basis of an entire reciprocity.

ARTICLE III.

All kind of merchandise and articles of commerce, which may be lawfully imported into the ports of the Empire of Russia in Russian vessels, may also be so imported in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or articles of commerce had been imported in Russian vessels. And, reciprocally, all kind of merchandise and articles of commerce, which may be lawfully imported into the ports of the United States of America in vessels of the said States, may also be so imported in Russian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of

any private establishments whatsoever, than if the same merchandise or articles of commerce had been imported in vessels of the United States of America.

ARTICLE IV.

It is understood that the stipulations contained in the two preceding articles are to their full extent applicable to Russian vessels and their cargoes arriving in the ports of the United States of America, and reciprocally to vessels of the said States and their cargoes arriving in the ports of the Empire of Russia, whether the said vessels clear directly from the ports of the country to which they respectively belong or from the ports of any other foreign country.

ARTICLE V.

All kind of merchandise and articles of commerce, which may be lawfully exported from the ports of the United States of America in national vessels, may also be exported therefrom in Russian vessels without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or articles of commerce had been exported in vessels of the United States of America. And, reciprocally, all kind of merchandise and articles of commerce, which may be lawfully exported from the ports of the Empire of Russia in national vessels, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or articles of commerce had been exported in Russian vessels.

ARTICLE VI.

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Russia, and no higher or other duties shall be imposed on the importation into the Empire of Russia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States or of Russia, to or from the ports of the United States, or to or from the ports of the Russian Empire, which shall not equally extend to all other nations.

ARTICLE VII.

It is expressly understood that the preceding articles II, III, IV, V, and VI, shall not be applicable to the coastwise navigation of either of the two countries, which each of the high contracting parties reserves exclusively to itself.

ARTICLE VIII.

The two contracting parties shall have the liberty of having in their respective ports Consuls, Vice-Consuls, Agents, and Commissaries, of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations; but if any such Consul shall exercise commerce,

they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or the tranquillity of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

ARTICLE IX.

The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities, for the search, arrest, detention and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belong, or sent back to their own country by a vessel of the same nation or any other vessel whatsoever. But if not sent back within four months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE X.

The citizens and subjects of each of the high contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at will, paying to the profit of the respective Governments such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representatives, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise

among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate, within the territories of one of the high contracting parties, such real estate would by the laws of the land descend on a citizen or subject of the other party, who by reason of alienage may be incapable of holding it, he shall be allowed the time fixed by the laws of the country; and in case the laws of the country actually in force may not have fixed any such time, he shall then be allowed a reasonable time to sell such real estate, and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective Governments any other dues than those to which the inhabitants of the country wherein said real estate is situated shall be subject to pay in like cases. But this article shall not derogate in any manner from the force of the laws already published, or which may hereafter be published, by His Majesty the Emperor of all the Russias, to prevent the emigration of his subjects.

ARTICLE XI.

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE XII.

The present treaty, of which the effect shall extend in like manner to the Kingdom of Poland, so far as the same may be applicable thereto, shall continue in force until the first day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and if, one year before that day, one of the high contracting parties shall not have announced to the other, by an official notification, its intention to arrest the operation thereof, this treaty shall remain obligatory one year beyond that day, and so on until the expiration of the year which shall commence after the date of a similar notification.

ARTICLE XIII.

The present treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by His Majesty the Emperor of all the Russias, and the ratifications shall be exchanged in the city of Washington within the space of one year, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the present treaty in duplicate, and affixed thereto the seal of their arms.

Done at St. Petersburg the sixth/eighteenth December, in the year of Grace one thousand eight hundred and thirty-two.

[SEAL.] JAMES BUCHANAN.

[SEAL.] CHARLES COMTE DE NESSELRODE.

SEPARATE ARTICLE.

Certain relations of proximity and anterior engagements having rendered it necessary for the imperial Government to regulate the commercial relations of Russia with Prussia and the Kingdoms of Sweden and Norway by special

stipulations, now actually in force, and which may be renewed hereafter; which stipulations are in no manner connected with the existing regulations for foreign commerce in general: The two high contracting parties, wishing to remove from their commercial relations every kind of ambiguity or subject of discussion, have agreed that the special stipulations granted to the commerce of Prussia, and of Sweden and Norway, in consideration of equivalent advantages granted in these countries, by the one to the commerce of the Kingdom of Poland, and by the other to that of the Grand Dutchy of Finland, shall not, in any case, be invoked in favor of the relations of commerce and navigation sanctioned between the two high contracting parties by the present treaty.

The present separate article shall have the same force and value as if it were inserted, word for word, in the treaty signed this day, and shall be ratified at the same time.

In faith whereof we, the undersigned, by virtue of our respective full powers, have signed the present separate article, and affixed thereto the seals of our arms.

Done at St. Petersburg the sixth/eighteenth of December, in the year of Grace one thousand eight hundred and thirty-two.

[SEAL.] JAMES BUCHANAN.
[SEAL.] CHARLES COMTE DE NESSELRODE.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE[1]

(No. 10.) ST. PETERSBURG 20 December N. S. 1832.

SIR

It becomes my duty to prepare another Despatch for you, before the departure of Mr. Clay, on a subject of much delicacy.

I yesterday received a note from Count Nesselrode informing me, that he had yet some overtures ("quelques ouvertures") to make, & appointing an interview for to-day at half past 10 O'Clock.

Soon after our meeting he observed, that he thought this a proper occasion, when new & more intimate relations had just been established between Russia & the United States, to advert to a subject which had given the Imperial Government much uneasiness. He said the Newspapers of the United States had been very abusive in their language towards the Russian Government for its conduct in relation to Poland. Our Editors had not only extracted the most false & absurd statements concerning the proceedings of the Emperor from hostile Journals on this

[1] MSS. Department of State.

side of the Atlantic; but they had themselves made the severest commentaries on his conduct. The Globe, which was understood to be the Government paper, instead of contradicting these misrepresentations, as it might have done, from the information which had been furnished to the Department of State by the Legation at Washington, had itself been distinguished for falsehoods. He mentioned that the feelings which the Emperor entertained towards the United States were of the most friendly character. He had lately given a distinguished proof of these feelings, not only by consenting, in opposition to the general policy of his Government, to the conclusion of a Commercial Treaty with the United States; but by the manner in which he had been pleased to announce the fact to myself. The Count, therefore, trusted that the President would adopt measures to remove this cause of complaint in future, at least against the Official Paper at Washington. He then read me what he styled an inofficial note [1] which had been prepared to enable me, if I thought proper, to write, by Mr. Clay, upon the subject; & also part of a communication from Baron Sacken to Mr. Brent under date of the 14th of October.[2]

The introduction of this subject, in a manner so formal & solemn, at first took me by surprise; but the time occupied by his remarks & the reading of the papers afforded me an opportunity of collecting my ideas.

I observed in reply, that I was glad he had mentioned this subject. In regard to the public Press of the United States, he must be aware it was perfectly free, & not in any degree under the control of the Government.

I said it was perhaps unfortunate, that the Russian Journals had never thought proper to contradict the false & exaggerated statements published in the French & English Newspapers to which he had alluded. So far as the opinion of foreign nations was concerned, this circumstance was well calculated to make an unfavorable impression. Some Editors in the United States, having never seen these statements publickly contradicted, took the truth of them for granted. It was difficult, even here, to obtain accurate information on the subject. Ever since my arrival, I had been endeavouring to ascertain the true history of the policy which had been pursued by Russia towards Poland; & although

[1] See Enclosure A, infra, p. 305.

[2] See Moore, Digest of International Law, II. 165.

I had discovered enough to convince me that these statements were greatly exaggerated, yet I had not experienced as much success in my inquiries as I desired. It would afford me the greatest pleasure to be made acquainted with any authentic facts in relation to this matter, & communicate them to the President. I should also be much pleased if he would furnish me with the information which they had given to the Department of State. Whilst I should have the honor of representing my Government at this Court, it would always afford me the greatest pleasure to cherish the most cordial good feelings between the two Nations.

After all, I observed, that the best mode of ascertaining the genuine feelings of the President & people of the United States towards Russia was not from publications in a few Journals; but from their uniform conduct, which had, I believe, been always satisfactory. I spoke at random in asserting that there were 1000 different Newspapers published in our Country; nevertheless I believe it to be true. It was certainly not a correct method of ascertaining public opinion, to select only from the mass the few papers which had published quotations or made remarks unfavorable to Russia. Even these, judging from what I had seen, had but occasionally referred to Polish affairs, & did not habitually make them the subject of observation. These remarks were lost upon the people in the crowd of other matters more nearly affecting their interests.

Although Baron Sacken might deserve much credit for the zeal with which he served his Sovereign, I did not think he had adopted the best mode of communicating a faithful impression of the feelings of the people of the United States towards Russia, by selecting a few of the most prominent Editorial articles & placing them in bold relief before his Government. These things passed away with us almost as soon as they were published. They were forgotten before the Despatch which contained them could reach St. Petersburg. And it was certain there had been nothing like a systematic or general attack upon the policy of his Majesty.

He said he was aware of the freedom of the Press in America, & how liable our editors were to receive the false impressions which the French & English Journals were calculated to make; but he expressed a great desire that the people of the United States should not be deceived by these calumnies. He believed, however, that the Globe formed an exception to the general rule, & was a paper over which the Government exer-

cised a direct control. Under these circumstances it might have been expected, Mr. Livingston would have assured Baron Sacken, at their interview in New York, that no such publications should in future appear in that Journal. This he had omitted doing, & the Globe had been even more violent afterwards than before.— He added, it would afford him pleasure to furnish me copies of the documents in relation to Poland which had been communicated to our Department of State; but they were now of so old a date, I would not find them interesting. (I should have been pleased to see them notwithstanding.)

I replied, that the Globe was called the official paper; but the Government could exercise no influence over it, except merely by advice. I was persuaded that even the influence of Mr. Livingston over the Editor was not much greater than my own, which would amount to nothing. I had not received that paper for several months, & therefore could not speak of what had been contained in its columns of a late date; but this I could assert, with a perfect conviction of its truth, that during the summer, although I had perused all its numbers in succession, I did not think the general course of the paper could have been offensive.

And here I took occasion to observe, that shortly after my arrival, I had solicited the Post office Department to have American Newspapers conveyed to me by mail from London, upon the same terms as English Newspapers, but was sorry to say, I had been unsuccessful in the attempt. He immediately requested me to address him a note upon this subject, & said he would endeavour to have such an arrangement made as I desired.

He then stated that they did not believe the remark attributed to General Jackson at Lexington had ever been made. I took him at his word, & expressed my pleasure at this avowal, adding that without any knowledge of the facts, I thought I might venture to assure him it was a mere fabrication.

I hoped he would not again have introduced the Globe; but in this I was disappointed. He suggested that General Jackson himself must certainly have some influence over the Editor. I observed it was probable he might have: & without waiting for the conclusion of my remark, he expressed a wish that I should request him to exercise it, for the purpose of inducing the Globe to pursue a more cautious [or guarded] course hereafter. I replied it would afford me great pleasure to make his wishes known to the President.

Speaking of General Jackson, I told him I would relate an anecdote which had some currency in the United States before my departure. I could not vouch for its truth; but it might serve to present in striking colors the character of our Free Press.

It was said Baron Sacken had, on one occasion, complained to him of the attacks which had been made upon the Emperor in our Newspapers. In reply the General requested him to examine the papers again, & if they did not contain a hundred articles abusing himself, for one that was injurious to his Imperial Majesty, he would then agree there was cause for complaint.

The Count laughed heartily at this anecdote, & it appeared to put him in a very good humor.

I then informed him, that beloved & venerated as General Jackson justly was by the people of the United States, he might have made such a remark, with the utmost truth, during the late Presidential contest.

The Count afterwards offered to lend me the copy of the note addressed by Baron Sacken to Mr. Brent on the 14th October last, observing, that if I chose, I might take it home, & peruse it at my leisure & then return it. I thanked him for the offer & brought it with me. I shall preserve a copy for the use of the Legation.

He now changed the subject, & with evident satisfaction, informed me, he had just received news from London, that the affairs of Don Pedro were in a very critical situation. I replied that the conduct of the President towards Don Miguel presented a striking illustration of our general policy towards foreign Nations. We never interfered with their internal concerns, & always recognised the Governments we found established. We were almost the only nation which maintained diplomatic relations with Don Miguel, & although he had been the object of much censure in the American Press, still the popularity of the President had not been injured by this recognition. The Count assented to the justice of these remarks.

In truth the Pope, Spain & the United States, are the only Powers which have treated Don Miguel as the lawful King of Portugal: & whatever may be our private wishes, as the friends of Liberty & justice, the commercial interests of our Country would be deeply injured by his defeat.

When about to take my departure the Count asked me if Mr. Clay had ever travelled as a Courier before; & whether he spoke the Russian Language. I said he never had, & spoke but little

Russian. He had been dissappointed by Lieutenant Anderson, a Russian officer, who had obtained a Congé & agreed to accompany him to England, & he would now be under the necessity of going alone. He replied, that without a knowledge of the language Mr. Clay might experience difficulties on the road; & offered, in the kindest manner, to send a Government Postillion before him, as an Avant Courier, to prepare, & pay for the Post Horses, & see him safely to Polangen, the frontier town of the Russian dominions. I readily accepted this offer, chiefly because Mr. Clay was to be the bearer of Despatches from this Government to Berlin & London, as well as to Washington; not dreaming, however, that we should have to pay for the Postillion's post horses. You may judge of my surprise, when an hour afterwards, he presented himself with his bill for the expense, amounting to 451 Roobles $3\frac{1}{2}$ Kopecks, which I was obliged to advance. It was then too late to retract.

When I informed Count Nesselrode I had discovered enough to convince me that the statements in the French & English Newspapers of the conduct of Russia towards Poland had been greatly exaggerated, I said no more than I believed to be true. In this admission I did not intend to justify the policy of Russia. Far from it. Even considering Poland as a conquered Province of the Empire, whose integrity as a Nation & whose free institutions had never been guarantied by the Emperor & the great Powers of Europe, her people have suffered much unnecessary severity. From the information I have received since my residence in St. Petersburg, I cannot be mistaken in this respect. It is equally certain that many of the acts of vengeful cruelty & wanton barbarity attributed to Russia have been greatly exaggerated, or exist only in the imaginations of those whose sympathy for the brave & unfortunate Poles has come a "day too late." They would, at the present moment, have been in the enjoyment of the Constitution granted by the Emperor Alexander, had there been a trifling display or even threat of foreign force in their favor, in the hour when their bravery & devotion kept the balance of victory suspended between them & their gigantic oppressors. France & England, by their fears, then lost the fairest opportunity they may ever have of arresting the power of Russia. A compromise might then have been easily effected, between the Sovereign & his subjects, which would have preserved the power, as well as the name, of Poland.

The interview which I have just described serves to shew

how indispensible it is that our Minister to this Country should be kept advised of every proceeding in the United States which may affect the relations between the two nations. He has indeed a most difficult part to perform. He must be cautious in the extreme, & is under the habitual necessity of concealing his real sentiments. It is utterly impossible for these people to realise the state of affairs in the United States. We are political antipodes, & hence the great difficulty of maintaining those friendly relations which are of so much importance to the interests of our Country.

I know not when Count Nesselrode received the Despatch containing a copy of Baron Sacken's note to Mr. Brent, or what influence it might have had upon the negotiation, had it arrived at an earlier period. Of this however I feel confident, that had I been immediately advised of the different proceedings as they took place in the United States, this unpleasant interview might have been avoided. Even yet it may be of great importance that I should be made acquainted with all the particulars.

I would suggest the policy of advising the Editor of the Globe to abstain at least from severe editorial attacks against the Emperor of Russia. These cannot do any good, & may produce much injury. Neither the cause of Poland, nor that of human Liberty can suffer by his silence in a Country where there are so many other able & faithful sentinels.

I should also advise the publication of an editorial paragraph, in the Globe, expressing a proper sense of the Emperor's good feelings towards the United States evinced by making us an exception to his general policy in concluding the Commercial Treaty. Should this be done, & the President think proper, even in the slightest manner, to allude to the subject in his inaugural address, the Emperor's feelings would be highly gratified.

I requested Mr. Vail, some time ago, to send me the semi-weekly Globe by mail from London. Although this may be expensive, I consider it absolutely necessary. It would seem however that the Department have ceased forwarding my papers to his care. Will you be kind enough to give particular directions that the semi-weekly Globes & the Lancaster Journal shall be sent to him, in a separate parcel, four times in each month, by the regular Packets from New York to Liverpool. It is true these papers will be read at the Post Office here before they are delivered; but should they contain any thing offensive to this

Government, it will come to my knowledge before inflammatory commentaries can be received from Washington. The course of the Mail between New York & this City by way of Liverpool is perfectly regular, & the time of passage is not usually longer than Thirty five days.

I assure you I feel sensibly the delicacy of my position; but knowing your distinguished abilities & long experience, I feel confident if I could attract your special regard to this important mission, we might, in perfect consistency with the high & independent character of our own Country, keep his Imperial Majesty in a state of better feeling towards the United States, than almost any other nation.

Yours very respectfully

JAMES BUCHANAN.

HON: EDWD. LIVINGSTON
Secretary of State.

[Enclosure A, in No. 10.]

Parmi les journaux Américains, celui de l'administration, le GLOBE, publié à Washington, se distingue par son langage hostile contre la Russie. Ce sont surtout les affaires de Pologne qui lui prêtent matière aux plus étranges assertions. Il accueille à cet egard toutes les fausses données que d'autres feuilles prennent à tâche d'accréditer, et qui n'ont pour but que de calomnier et de représenter sous le jour le plus odieux les actes du Gouvernement Russe en Pologne.

La mission Impériale s'est vainement éfforcé de rectifier par des renseignemens authentiques les idées erronées qui ont été répandues de cette manière dans le public Américain. Ayant acquis la certitude que la redaction du GLOBE est sous l'influence immédiate du Gouvernement, le Baron Sacken s'est adressé au Departement d'Etat pour obtenir, sinon que les calomnies publiées sur le compte de la Russie soient refutées, du moins qu'il soit recommandé à la feuille officielle de tenir un langage plus circonspect et plus conforme aux relations d'amitié qui subsistent entre les deux Gouvernemens. Il a écrit à ce sujet une lettre pressante à Mr. Brent, et il a eu un entretien avec Mr. Livingston à son passage par New York. Mais, bien que les assurances qu'il a reçues à cette occasion des dispositions amicales du Gouvernement des Etats-Unis à l'egard de la Russie, soient des plus satisfaisantes, Mr. de Sacken n'a pas pu obtenir la promesse qu'il seroit remédié à l'état de choses sur lequel il a cru devoir appeler l'attention de Mr. le Secretaire d'Etat.

Il semble que la feuille officielle de Washington se plait à dénaturer la vérité, même en parlant des sentimens que le Président manifeste envers la Russie. C'est ainsi qu'elle lui attribue un discours que le Général Jackson aurait tenu à Lexington, et dans lequel il aurait dit entr'autres:

"La France, comme Gouvernement, a perdu de vue l'humanité aussi bien que ses propres intérêts; elle n'aurait dû épargner ni sang ni argent, pour assurer l'indépendance de la Pologne. Cette nation, une fois indé-

pendante, aurait été une barrière une fois indépendante, aurait été une barrière contre la politique envahissante de la Russie."

The foregoing is a correct copy of the unofficial note delivered to me by Count Nesselrode at our interview on the 8/20 December 1832.

JAMES BUCHANAN.

TO GENERAL JACKSON.[1]

ST. PETERSBURG, 20 December, N.S. 1832.

DEAR GENERAL,

Although nearly fagged out I cannot suffer Mr. Clay to depart without addressing you a few lines. My official Despatch will contain all the news relative to the conclusion of the Treaty. After reading it, if you should approve of the manner in which I have conducted the Negotiation, it will be a great satisfaction for me to know that I have obtained your approbation.

We have received news of the most favorable character respecting the Presidential election from Pennsylvania and New York. Although I have always believed with great confidence in your re-election; yet there is a difference between the firmest belief and absolute certainty which all those have experienced whose feelings have been warmly enlisted in any cause. In reading the Pennsylvania Newspapers I have a hundred times regretted that I could not be present to take that part in the election which my personal feelings and a regard for the best interests of my country would have dictated. And here permit me to observe that although the professions of others may have been more loud, you have not a friend on earth who rejoices more sincerely than myself at the victory you must have gained over the combined forces of National Republicanism, Anti-Masonry, Bankism and all the other isms which have been arrayed in opposition to you. Long may you live to enjoy this triumph and May your declining years be passed in peace and happiness!

There are some reasons why in my opinion Mr. Clay, if convenient, should be transferred to some other situation, I shall leave those to be explained to you by himself. I need scarcely add that they are wholly independent of the discharge of his official duties. Indeed, no person could have performed these better and they have been arduous during the negotiation. Be-

[1] Jackson MSS., Library of Congress.

sides he is a young gentleman of good talents amiable disposition and agreeable manners: and from his knowledge of the French would make a most useful secretary of Legation at any Court in Europe.

Should his wishes for a change of situation be gratified, you would confer a great favor upon me by knowing the character of his successor yourself, and then I shall have a sure pledge that he will be both competent and agreeable. Indeed unless he should possess great caution, agreeable manners and a knowledge of the French language, instead of being advantageous to our Country at this Court he might do us a serious injury. There was a gentleman of New York whose name I think is M'Kean—and a member of the Legislature of that State highly recommended to me before I left the Country. I never saw him and therefore cannot be a judge. I leave all however to your own choice, with this observation, that if the individual should come to me recommended by yourself I will diminish his expenses considerably by inviting him to become a member of my family as Mr. Clay has been. If not I shall at least try him before I incur any risque in regard to his manners and temper. I shall ever thank you for your advice upon a former occasion in relation to a similar matter. In making this selection perhaps you will have the goodness to consider one circumstance. The person may I trust before very long have to remain here as Chargé d'affaires. The melancholy death of my brother and the ill state of health of my mother an only surviving parent, and a sister who is very dear to me may make it my duty to ask for permission to return home sooner than I intended. These feelings however shall not interfere with my public duties whilst any thing of importance remains to be done in St. Petersburg: though it is certain that a residence in this country can never become agreeable to a man of my feelings. I ask it as a favor therefore with which I know you will comply, that you would direct that your instructions should be sent to me speedily as to what course I shall pursue in regard to the Treaty concerning maritime rights. Should a favorable opportunity offer, is it your wish I should renew the negotiation.

I have not received the scrape of a pen from the Department of State since I left home. I suppose this must be the common practise as I cannot imagine I would be made an exception. I have often been mortified on this subject in conversing with my brother Diplomats. They keep up a constant correspondence

with their respective Courts; and I have had to evade many questions when a direct answer would imply that I had heard nothing on the subject from Washington. Although it would by no means be necessary to follow, to the extent, the example of European Courts in this respect, yet I think one of the Clerks in the Department of State, if the Secretary cannot spare time, might at least acknowledge the receipt of important Despatches, and send such documents enclosed in the form of a letter as the Presidents Message, the reports of the Secretaries and Postmaster General, and any thing which occurred in Congress of importance to be known at the Legations abroad. For the Tariff Bill as it passed I was indebted to mere accident. I have not received an American Newspaper for more than two months and my friends in writing to me refer'd me to the papers for political information. I do not yet know who were the Candidates for Congress in my own district at the last election.

A few days since I received a letter from Baring and Brothers informing me that in consequence of instructions from the Department of State they would pay my salary and contingent expenses after the first of January next. For this additional token of your kindness please to accept my thanks. It was utterly impossible, whilst Merchants of Amsterdam continued Bankers of this Legation that I should not have had difficulty in settling my accounts.

Excuse me for the liberty I take of writing so freely to you. Mr. Clay will be able to give you much interesting information in regard to this Country. Please to remember me kindly to the members of your Cabinet, particularly Major Barry, Mr. M'Lane and Mr. Taney. Tell the former I long since expected to have heard from him. Make my best and kindest respects to the ladies of your family and Mr. Donelson, and believe me to be your grateful and affectionate friend

JAMES BUCHANAN.

GENERAL ANDREW JACKSON.

P. S. I beg your special attention to my supplemental letter to Mr. Livingston. I do not call it a Despatch and hope it will not be placed on record as such. I shall dress it up in form and send it hereafter by the first opportunity. It contains the whole substance of what occurred at this extraordinary interview.

1833.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 11.) St. Petersburg 9 January N. S. 1833.

Sir

Your favor of the 11th November last acknowledging the receipt of my first six Despatches reached me on the last evening of the old year.

I received, by the same Mail from Havre, several packages containing Newspapers, Journals of the Senate & House of Representatives, & in short all which the Department had sent by the Packet of the 20th of November. The postage amounted to 1638 Roobles & 72 Kopecks, or about $330!!! Such a mass was never sent by Mail before from Havre to St. Petersburg. I know not who may have placed it in the Post Office; but I immediately wrote to Mr. Beasley to arrest any other travellers of a similar character who might be coming this way.

American Newspapers are a luxury so expensive that I never thought of receiving, during the winter, more than three numbers per week from London; You may then conceive my astonishment when this heavy consignment came to hand.

I have lately heard from Mr. Niles that packages directed to me by the Department had been for some time accumulating in the Legation at Paris; & he did not expect to have any opportunity of transmitting them to St. Petersburg. To do this I know is impracticable.

The route by Liverpool & London, besides being the most certain & expeditious, is that alone by which they can be transmitted: & even letters reach us by no other, with any degree of regularity.

I was much pleased with the compliment to Mr. Clay contained in your Despatch. It was well deserved & will no doubt be highly gratifying to his feelings. I can scarcely tell why marginal notes have not been made to my Despatches; but he will be able to supply this omission whilst at Washington.

Unless I am much deceived, the Russian Government are, at this moment, fitting out and have almost if not altogether completed an expedition in the Black Sea, for the purpose of

[1] MSS. Department of State.

assisting the Turk against the Egyptian. Doubtless a leading object of this policy is to obtain a naval station in the Mediterranean. The present Emperor has now a large Navy; & is continually building new vessels. He is ambitious of becoming powerful by sea as well as by land, and in this respect differs from his Predecessor. Many obstacles exist to impede his success. His ship timber is not durable, & he has no commercial marine from which to draw his sailors. Besides, whilst confined to the Baltic & the Black Sea, his vessels must be laid up a great portion of the year. It is for the purpose of removing this difficulty that he is so anxious to obtain a station in the Mediterranean.

He will probably have accomplished his views in assisting the Sultan, whatever they may be, before England & France can have an opportunity even of remonstrating. It is by superior policy more than by superior power that this Government have been so successful. The day, however, may not be far distant when their very conquests like those of Rome will prove the weakness instead of the strength of the Russian Empire.

Please to cast your eye over Despatch No. 10, here with transmitted. It contains some matters not embraced in the hasty & imperfect sketch forwarded by Mr. Clay.

I send you the St. Petersburg Journals received since Mr. Clay's departure. You will observe in the number of the 15 27 December last a formal contradiction of the charges recently made against this Government in the Journal du Commerce. Whether any thing I have said to Count Nesselrode may have had an influence in inducing them to depart from their accustomed silence I shall not pretend to determine. Would it not be proper to have this Article translated & published in the United States?

I send you this by an English Courier to the care of Mr. Vail.

Yours very respectfully

James Buchanan.

Hon. Edwd. Livingston
Secretary of State.

P. S. Since I closed the Despatch, I have heard doubts expressed in a highly respectable quarter, whether the Porte would dare to accept the offered assistance of the Emperor. It is said that such is the national antipathy of the Turks against the Russians,—and such their distrust in the Sultan's attachment to the true faith, that the acceptance of the proffered aid might

excite an insurrection in Constantinople which would cost him both his crown & his head.—I do not attach much credit to these reports; though the Ottoman Empire seems to be rapidly going to destruction. Ibrahim Pacha by the last accounts had reached the Provinces of Erzerum & Trebisond. He has many able & experienced French Officers in his army.—It is now confidently stated that the Emperor has sent General Mouravieff to warn the Pacha of Egypt to desist from his conquests, and if he should refuse, the expedition will at once move from Sebastapol without waiting for other orders from St. Petersburg.—The Sultan first applied to England for assistance.

Should Russia go to war as the ally of the Porte, our late Treaty will then become doubly important. This war might also facilitate the conclusion of the Treaty concerning Maritime rights, should it be thought expedient to renew the negotiation. Sed quere de hoc. I am very anxious to hear from you on this subject. I must stop otherwise the postscript will contain as much as the Despatch.

TO THE REV. EDWARD BUCHANAN.[1]

St. Petersburg, Jan. 9th, N. S., 1833.

My Dear Brother:—

I have received your three letters of the 10th and 26th September and of the 12th November: the first on the 21st October, the second not till the 2d instant, and the last on the 28th December. You will thus perceive that the one announcing the death of poor George had a very long passage, having got out of the usual line and lain at Paris a considerable time. I had heard of this melancholy event long before its arrival. How consoling it is to reflect that he had made his peace with Heaven before he departed from earth. All men desire to die the death of the righteous; but a large portion of the human race are unwilling to lead their life. I can say sincerely for myself that I desire to be a Christian, and I think I could withdraw from the vanities and follies of the world without suffering many pangs. I have thought much upon the subject since my arrival in this strange

[1] Curtis's Buchanan, I. 159. As the original of this letter is not among the Buchanan Papers in the Historical Society of Pennsylvania, the passage omitted by Curtis cannot be supplied.

land, and sometimes almost persuade myself that I am a Christian; but I am often haunted by the spirit of scepticism and doubt. My true feeling upon many occasions is: "Lord, I would believe; help Thou mine unbelief." Yet I am far from being an unbeliever.

Ere this reaches you, you will probably have heard of the conclusion of the commercial treaty, which was the principal object of my mission. My success under all the circumstances seems to have been almost providential. I have had many difficulties to contend with and much serious opposition to encounter; but through the blessing of Providence I have been made the instrument of accomplishing a work in which all my predecessors had failed. I trust it will receive the approbation and promote the interests of my country.

I entertain some faint hopes that I may be permitted to leave St. Petersburg by the last steamboat of the next season; though it is probable I shall be obliged to remain another winter. Nothing, however, shall detain me longer than two years from the time of my arrival, except an urgent sense of public duty or the request of General Jackson, neither of which I anticipate. My anxiety to return home is increased by the present state of health of mother and Jane. It is not in any degree occasioned by want of kindness on the part of the people here. On the contrary, I am everywhere received in the most polite and friendly manner, and have good reason to believe I am rather a favorite, even with the emperor and empress themselves.

I shall undertake to advise you strongly not to remain in Allegheny Town. A letter which I have received from Dr. Yates confirms me in this opinion. I am glad to find this seems to be your own determination. There are but two brothers of us and you ought to use every precaution to preserve your health consistent with your duty. . . . . .

My health is good, thank God, and I trust it may so continue with His blessing until we shall all once more meet again. With much love to mother and the rest of the family, I remain

Your affectionate brother,

JAMES BUCHANAN.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 12.) St. Petersburg 14/26th, January 1833.

Sir/

I embrace the opportunity of addressing you offered by Mr. Stuart, an attaché of the British Embassy in this City, and a great-grand son of William Penn, who sets out to day for London.

Last Sunday week was New Years day in this Country, and the annual fête at the Winter Palace was the strangest spectacle I have ever witnessed. It is peculiar to Russia. The immense & splendid saloons of this Palace were thrown open for the admission of all classes of the people; and those who are the best informed have assured me there were at least fifteen thousand persons present. Every room was crowded to excess. Indeed it seemed almost impossible for any person to penetrate; and yet the most profound silence & order prevailed throughout the whole assembly. The calm of despotism was there. The Emperor, at the head of a procession which was not numerous, passed several times through all the rooms, & the crowd every where made way on his approach. The spectacle exhibited, even in this country, a remaining trace of the natural equality of mankind. The Emperor is a very popular sovereign & feels that confidence in mingling with his subjects which is rarely the lot of a Despot. Indeed all classes of people with whom I have conversed, whether natives, or strangers settled in the country, entertain the most exalted opinion of his ability, integrity & justice, and would consider his loss as one of the greatest misfortunes which could befall the Empire. He receives full credit for all the good which is done, whilst the evil is charged to the account of his Ministers. Still from the severity of his character he is more respected than beloved.

Both the Emperor & Empress seemed curious to ascertain the effect of the spectacle on my Republican feelings, and this afforded me an opportunity of conversing freely with both:— an honor not often accorded to public ministers of my rank at this stately & formal Court. It is evident he places considerable value on the good opinion of the American people. He remarked it was strange, that whilst so many of our vessels en-

[1] MSS. Department of State.

tered the Ports of Russia, so few American travellers visited his dominions; and twice expressed a strong desire, that we should come and see them as they really were, and not as they had been represented by their enemies. He has so much personal pride & such a high sense of individual character, that I entertain no doubt the opinion of the rest of the world, in relation to his conduct towards Poland, gives him many an uneasy moment.

The national antipathy against the Poles is of the most malignant character. Before the late attempted revolution, the Russians were jealous of the prosperity of Poland, and of the advantages afforded at their expense, as they believed, to her manufactures. In the state of public feeling, after the conquest of that gallant & unfortunate people, it would perhaps have been impossible for the Emperor to have granted them many privileges above the Russians. He may be a Jupiter in his own dominions, but like this fabled Divinity is controlled by fate. Still, making every allowance for the difficulties of the position which he occupied, his conduct, although it may be much palliated, can never be justified.

Although neither Baron Sacken nor his communications were introduced throughout the conversation, I came to the conclusion, either that they had made no serious impression upon the Emperor, or that the effect of them had been removed at my last official interview with Count Nesselrode.

Through the politeness of Baron Stieglitz I was favored, on Friday afternoon the 18th, with the perusal of the Presidents message in the London Morning Herald of the 2d Instant. It was indeed a great gratification.—I also received a copy of it on the same evening from Mr. Vail; to whose letters I have been indebted for nearly all the political information I have obtained from the United States, since the Department has sent my Newspapers to Havre.—The Message was longer than usual on the passage from New York to this City.

I enclose you herewith the Duplicate of my account for the quarter ending on the 30 September last, and also my account, with the certificates of the Bankers, for the last quarter ending on the 30 December. When I forwarded my first account, on the 5 July, I inquired of Mr. Pleasonton whether the expense of a London paper would be allowed me; but have not yet received any answer to my letter. I have, therefore, not renewed my subscription to the London Times, the cost of which in this City was 750 Roobles, or about $150 per annum. The Hamburg Re-

porter, which I have taken in its stead, does not cost the one sixth of this sum.

No news from Constantinople has transpired in this City, since that of the defeat & capture of the Grand Vizier on the 20th December last. It seems that the feint which Ibrahim made of flying from Iconium (or Koniah) towards Mount Taurus completely deceived the Vizier, & when after having been pursued for five days, the former turned & attacked the latter, he was taken by surprize & his army routed & dispersed. But you will no doubt have learned all the particulars ere this can reach you.

Since this disaster some persons have predicted that the Russian expedition would be arrested. They say that nearly the whole Turkish nation are hostile to the Sultan, and it would be madness for Russia to attempt to sustain him, against the feelings & prejudices of his entire Empire. I confess I was astonished, some evenings ago, to hear Baron Brunnow say, that he supposed the Sultan would now come to terms,—he was an obstinate man as long as the danger was remote, but when it approached him it was his nature to yield. Such had been his conduct towards Russia;—they had been obliged to enter Adrianople before he would do them justice. He spoke of Ibrahim Pacha as an able man, & informed me that General Mouravieff was now at Constantinople & would no doubt act in the character of a mediator between the two parties. It is worthy of remark, that throughout this conversation, which was private, he did not even allude to their own preparations, although every thing I stated concerning them in my last Despatch was substantially correct. The extent to which the Emperor may aid the Sultan will no doubt be regulated by circumstances & events; but of this I feel confident, that he will not, if he can prevent it, suffer Ibrahim to enter Constantinople. He will never, under any circumstances, permit the Egyptian to establish himself in European Turkey.

Count Nesselrode expects to send the ratification of the Treaty to Washington within a few days.

Yours very respectfully

James Buchanan.

Hon: Edward Livingston
Secretary of State.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 13.) St. Petersburg 1. February N. S. 1833.

Sir

This Government received news, on Wednesday last, from Constantinople, up till the 5th Ultimo, N. S. All was then quiet in that City, and no apprehensions were entertained of an insurrection. Ibrahim Pacha had not advanced beyond Aksher, and it was believed he would not. General Mouravieff had sent a Russian Colonel to his Camp, & had set out himself for Alexandria, to warn both the Father & the Son not to proceed further; and it was believed negotiations would be immediately commenced between the Sultan and Mehemet Ali. A Turkish Officer of rank accompanied General Mouravieff to Egypt. Such is the news which this Government has communicated to some of the members of the Diplomatic Corps. It is impossible that I should myself go to Count Nesselrode, before the departure of the French Courier who will be the bearer of this Despatch.

I have read, with pride and pleasure, the encomiums contained in the English & French Journals on the Presidents late Message and Proclamation. Both these documents have commanded the unqualified approbation of the Diplomatic Corps in this City. Even the St. Petersburg Journal has departed from its accustomed reserve, and has published an article, in the highest degree fair and friendly, in relation to our unhappy differences with South Carolina. I send you the number containing it of the 19/31 January.

I also transmit herewith a Duplicate of my account for the last quarter and of the certificates of the Bankers, together with the Duplicate of Despatch No. 12.

Yours very respectfully

James Buchanan.

Hon: Edwd. Livingston
Secretary of State.

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[1] MSS. Department of State.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 14.) St. Petersburg 5 February N. S. 1833.

Sir,

Having learned that the ratification of the Treaty had not yet been transmitted to Washington by this Government, I obtained an interview to-day with Count Nesselrode, for the purpose of requesting him to send it without further delay. I told him I had received the impression it had been forwarded some time since and was sorry to have been mistaken; because if the ratifications could have been exchanged before the fourth of March, the President would then have been furnished with a favorable opportunity of adverting to the Treaty, in his inaugural address, & of expressing his genuine feelings in regard to Russia. He replied, that as the Treaty had been concluded here, under the very eye of the Emperor, the President could not entertain the least doubt of its ratification, and expressed a hope that the delay would not prevent him from alluding to the subject. I observed I did not know how that might be, as the Treaty could not be published in the United States until after the exchange of the ratifications.

He then informed me he intended to send a Courier to London to-morrow who should carry the ratification to that City. After some further conversation in which I assured him that both it and his Despatches would be as safe in the hands of a Captain of any one of our Packet ships between Liverpool and New York, as in those of a Russian Messenger, he concluded that in case Baron Krudener should have left England for the United States, he would embrace the opportunity I had suggested.—Should it therefore not be received by the Baron, it will be sent by Prince Lieven to Mr. Ogden in Liverpool, whom I shall request to have it delivered to Baron Sacken in case he should be in New York, and if not, to the Russian Consul in that City. This Despatch together with my letter to Mr. Ogden will be sent by Count Nesselrode's Courier to-morrow morning.—

I transmit herewith the copy of a statement which I have this moment received from Count Nesselrode of the duties paid by vessels in the port of Odessa, with that of the note by which it was accompanied. As soon as he shall receive similar state-

[1] MSS. Department of State.

ments respecting the ports of Taganrog and Asoph, they shall be forwarded to the Department. Will not the Lastage duty on the cargo of American vessels fall, under the operation of the Treaty? Is this not a Tonnage duty? Count Nesselrode in his statement places it under that head. If this be so, then the only remaining discrimination against our vessels is that of 25 Copeks per ton for anchorage.—It would seem that some changes have been made in the duties & charges on vessels since Mr. Ralle's report of November 1831.

I inquired of the Count the last news from Constantinople, informing him it was from no idle curiosity I made this request, as the security of our commerce must necessarily be much affected by the unsettled state of affairs in the East. He professed his entire willingness to communicate to me all the information which he possessed. This amounted to nothing more than what is contained in my Despatch of the first Instant, the Duplicate of which I send you herewith.—The Turkish officer who went to Alexandria, to propose terms of accommodation to the Pacha of Egypt, in behalf of the Sultan, is Halil Pacha, formerly his ambassador to St. Petersburg.

The Count expressed no decided opinion as to whether this mission would be the means of restoring peace between the Belligerents. He observed that the circumstances were very critical; but it was impossible that Mehemet Ali could entertain the expectation of becoming the Successor of the Sultan in any event; not even if he should be expelled from the throne by a revolution. The inclination of his mind seemed to be that peace might be concluded; but he remarked that he expected, in the course of a few days, to be able to give me more precise information.

After having informed me that he had received the late proclamation of the President from Baron Sacken, & after speaking of it in terms of commendation, he asked my opinion of the probable result of the controversy between the General Government & South Carolina. In answer I gave him a succinct history of the origin & progress of this controversy which it is wholly unnecessary to repeat. I then remarked that the only serious danger at any time apprehended was that the principles which prevailed in South Carolina might extend to the other Southern States:—That danger was now past. She stood alone,—& the friends of the Union, even there, constituted a large minority. Upon the whole my firm conviction was that in the end this unhappy contest would serve to strengthen our institutions by

manifesting the devoted attachment of the people to the Union, and by producing, upon terms of mutual concession, a final adjustment of the Tariff, a question which had so long agitated our Country.

I can scarcely describe the anxiety I experience on account of being deprived of information from the United States at this most interesting period. The Newspapers I never expected to receive from Paris; but it seems that Mr. Niles has thought proper instead of placing my letters in the Post Office, to await the departure of a Russian Courier. Unfortunately no such Courier has been sent since Prince Pozzo di Borga left Paris for London, nor is it believed by Count Nesselrode that one will be dispatched until after his return. Every person at present expects to receive information from me in relation to the United States, whilst all that I am able to obtain myself consists of scraps contained in English Newspapers kindly furnished me by Mr. Bligh, & of an occasional remark in the letters received from the United States by Baron Stieglitz, & Mr. Ropes, an American Merchant in this City.

Yours respectfully

JAMES BUCHANAN.

HON: EDWD. LIVINGSTON
Secretary of State.

(Enclosure in No. 14.)

Le Comte de Nesselrode a l'honneur de transmettre ci-près à Monsieur Buchanan, d'après les renseignemens qui lui ont été communiqués par le Gouverneur Général de la nouvelle Russie, une indication des droits et redevances qui se perçoivent à différens titres sur les navires dans le port d'Odessa.

Il saisit avec empressement cette occasion de renouveler à Monsieur Buchanan l'assurance de sa considèration très-distinguée.

ce 24 Janvier 1833.

DROITS QUE PAYENT LES NAVIRES DANS LE PORT D'ODESSA.

Tonnage. Chaque navire paye à ce titre, au profit de la Couronne, 50 Cop: par tonneau à son entrée, et autant à sa sortie.

Tout bâtiment étranger venant chargé d'un port étranger, paye en outre au profit de la Ville, 50 Cop. en assignations pour chaque Last de 120 Ponds de sa cargaison.

Ancrage. Les navires étrangers payent 50 Cop. par tonneau, les navires Russes, 25 Cop. au profit de la Ville.

Fanaux. Chaque vaisseau paye 25 Roubles pour l'entretien du fanal.

Quarantaine. Tout navire venant de l'étranger est muni par la quarantaine d'un pavillon de quarantaine et d'une instruction imprimée; il paye 5 Roubles pour le premier, et 1 Rouble pour la seconde.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 15.) St. Petersburg 22 February N. S. 1833.

Sir

I had the honor of receiving on the 15th Instant, through the Post Office, a copy of your note to Baron Sacken of the 4th December last, accompanied by a letter from Mr. Eugene A. Vail of the 15th of that month, from which I learned that you had addressed me a Despatch (No. 5) on the 5th December. Neither this Despatch nor number 4 have yet been received. They are probably in possession of the Russian Embassy at Paris along with my private letters.

And here permit me to remind the Department, that in sending Despatches, they should be careful not to have them transmitted to me by mail across the Continent of Europe, unless they be of such a character that they may be perused & copied not only at St. Petersburg, but in all the Governments through which they may have passed. Since my arrival in this City, I have not received a single communication of any kind, either through the Post Office or Foreign Office,—whether public or private, which has not been violated. It was not difficult in any instance to detect this violation: but in many the letters have been sent to me either almost open, or with such awkward imitations of the seals as to excite merriment. The Post Office American Eagle here is a sorry bird.

So notorious is this practice that no person in St. Petersburg attempts either to conceal or deny it. The distinction between a Despatch to be sent by Courier and one to be transmitted by mail is perfectly well understood among the Diplomatic Corps. They often use the latter mode of conveyance, for the purpose of communicating matters to this Government which it would be difficult to do in any other manner. So skillful are they here in the art of decyphering, and in obtaining possession of the cyphers of Foreign Ministers, that even these are not considered any great security. I think however it would puzzle them to detect that one invented by Mr. Ogden.

I have never yet had occasion to send a Despatch through the Post Office, & have but once used a Courier of Count Nesselrode

[1] MSS. Department of State. An extract from this despatch is inaccurately printed in Curtis's Buchanan, I 170-171.

for this purpose. When I may use either the one mode of conveyance or the other, it will be because my Despatch contains nothing which I desire to conceal.

The opening of my private letters is a matter of little consequence. My friends in America have all been placed on their guard.

This Government thus jealous & suspicious seem to have entire confidence in the integrity of the American character. It is astonishing that they were willing to entrust the Imperial ratification of our Treaty to an American Captain of whom they could have known nothing except that he was an American Captain. Baron Brunnow told me that when Count Nesselrode expressed his determination to send it in this manner from Liverpool, one of the persons who had been a long time in his private Chancery exclaimed against it:—and he added that it was a trust which had never before been confided except to an Employé of the Russian Government.

In regard to the practice of the Foreign Office in England relative to the violation of Despatches I am not positive. The private correspondence of that Kingdom is not habitually subjected to the inspection of the Government, as it is throughout the Continent; and I am inclined to believe, that unless upon extraordinary occasions, they would not, at the Foreign Office in London, open & read Despatches addressed to an American Minister. But on this subject my information is contradictory. With respect to France there is no such uncertainty.

English & French Couriers are not very frequent at present, & your Despatches may be a long time at the Foreign Office either of London or Paris awaiting such an opportunity.

Your best & safest mode of communication with me during the Spring and Summer will be by American Vessels.

At my interview with Count Nesselrode on the 20th December last, he read me only a portion of the note of the 14th October from Baron Sacken to Mr. Brent. Either he did not read any of the offensive parts, or being in French, I did not understand them at the moment. After I had perused it at leisure, although I considered the tone offensive, I did not feel myself authorised without your instructions to make any remonstrance on the subject to Count Nesselrode. Nevertheless in a conversation some time after with Baron Brunnow, I told him pretty freely my opinion of Baron Sacken's conduct: and he replied that my remark to Count Nesselrode in regard to "the mistaken zeal" of the Baron

had, he thought been perfectly just. Of course until your instructions shall arrive I cannot proceed in the business; when received they shall be obeyed both in the spirit & the letter, and at the same time with a just regard to the feelings of the Emperor.

I cannot think that the Despatches of Baron Sacken consequent upon your note to him of the fourth of December have made any serious impression upon the Emperor's feelings. I have met him often since the commencement of the Carnival, & he has uniformly treated me with marked kindness. This is not his manner towards those Diplomats against whose Government he believes himself to have cause of offence. I do not therefore anticipate any very serious difficulty in adjusting the affair.

After proceeding thus far in my Despatch, I had the pleasure of receiving from the Post Office, through Mr. Beasley at Havre, duplicates of Despatches Nos. 4. & 5. and the originals of Numbers 6 & 7. I need scarcely add they had all been opened. I shall endeavour to get Mr. Blake, a Merchant of Boston, by whom I had intended to send this as far as Koningsberg, to remain here until after I can obtain an interview with Count Nesselrode.

February 26 1833.

On yesterday at 2 O'Clock, P.M. I had a conference with the Count. I inquired if he had yet received from Washington the answer of Mr. Livingston to Baron Sacken's note of the 14th of October last: to which he replied in the affirmative. After expressing my regret that any thing unpleasant should have occurred at Washington, in the intercourse between the two Governments, whilst every thing here had been proceeding so harmoniously, I observed:

That Baron Sacken himself, in his note to Mr. Brent, had admitted, that the President, throughout the whole course of his administration, had constantly professed a desire to be on friendly terms with Russia. But the President's feelings had not been confined to mere official declarations to the Russian Government: they had been expressed, in strong terms, before the world, in each of his annual Messages to Congress previous to the date of Baron Sacken's note. Besides, they had been always manifested by his conduct.

The Baron, with a full knowledge of these facts, had addressed this note to Mr. Brent, which was not only offensive in its general tone, but more especially so, in imputing a want of sincerity to the President, & in effect charging him with tacitly

encouraging the abuse of the Emperor by the American Newspapers, whilst he was professing friendship towards the Russian Government. Such a charge was well calculated to make a strong impression upon General Jackson,—a man who during his whole life had been distinguished for sincerity & frankness. When after Mr. Clay's departure, I perused this note, with which His Excellency had been good enough to furnish me, I was convinced the President could not pass it over in silence; and I had since been astonished not to have received until very recently any communication on the subject.

I had now discovered the reason of this delay to have been an anxious desire on the part of the President to avoid every thing unpleasant in the intercourse between the two Governments; & an expectation that Baron Sacken himself, after reflection, would have rendered it unnecessary to bring the subject before the Imperial Government. In this hope the President had been disappointed. Nearly two months had transpired before Mr. Livingston answered the Baron's note. In the mean time a fair opportunity was afforded him to withdraw it, & a verbal intimation given, that this would be more agreeable to the President, than to take the only notice of it which he could take with propriety. Mr. Livingston had supposed, that under the circumstances, the Baron would have felt it to be his duty to visit Washington, where, at a verbal conference, the affair might have been satisfactorily adjusted. In this belief he was mistaken. At length on the 4th December he addressed Baron Sacken this answer which places in a striking light the most offensive part of his note;—the charge of insincerity. But even in it, the President's feelings of amity for Russia & respect for the Emperor are re-iterated. After this answer Mr. Livingston waited nearly another month, confident that a disavowal of any offensive intention would at least have been made. This not having been done, he has sent me instructions, dated on the 3d January last, to bring the subject under the notice of the Imperial Government: and it is for this purpose I have solicited the present interview.

The Count expressed his regret that any misunderstanding should have occurred between Baron Sacken & Mr. Livingston; that it was evident the former never could have intended any thing offensive to the President, as he had taken the precaution of submitting his note of the 14 October to Mr. Livingston in New York, before it was transmitted to the Department, who not only made no objection to it at the time, but informed him

it should be answered in a few days. The Count then asked me if Mr. Livingston had not communicated this fact in his Despatches. I replied in the negative, & from my manner intimated some doubt as to its existence; when he took up the Despatch of Baron Sacken & read me in French a statement of this fact. He said if Mr. Livingston had at that time objected to any part of the note, Baron Sacken would have immediately changed its phraseology. I answered that the President, at least, had certainly never seen it previous to its receipt at the Department: and it appeared to me manifestly to contain an imputation on his sincerity, & was besides offensive in its general character. He did not attempt to justify its language, but repeated that he thought Baron Sacken never could have intended to write any thing offensive to the President. If he had it would have been done in violation of his instructions. That the feelings of the Emperor as well as his own, were of the most friendly nature towards the Government of the United States, and in particular, both the Emperor & himself entertained the highest respect and esteem for the character of the President. That neither of them would ever think of sanctioning the imputation of insincerity, or any thing that was dishonorable to General Jackson, and he was very sorry Baron Sacken had written a note, the effect of which was to wound his feelings.

As the Count did not still *seem* to be altogether satisfied that the note attributed insincerity to the professions of the President, I then took it up & pointed out, in as clear & striking a manner as I could, the most offensive passages which it contained. After I had done, he repeated in substance what he had said before, but without any qualification whatever, expressing both his own sorrow & that of the Emperor, that Baron Sacken should have written a note calculated to wound the feelings of General Jackson or give him any cause of offense. He added that the Baron either had already left, or would soon leave the United States; and he had no doubt that upon the arrival of the Treaty and Baron Krudener in Washington, all matters would be explained to the satisfaction of the President, by whom he trusted this unpleasant occurrence would be entirely forgotten.

With this explanation I expressed myself perfectly satisfied, and assured him I should have great pleasure in communicating it to the President.

He then observed, that judging from the Despatch of Baron Sacken, this unfortunate business seemed to have been a succes-

sion of mistakes. That Mr. Livingston, through Mr. Krehmer, had pointed out to the Baron the exceptional parts of his note; but whilst he was engaged in correcting them, and before sufficient time had been afforded for this purpose he had received Mr. Livingston's note of the 4th of December.

In the course of the interview the Count read me several detached paragraphs from Baron Sacken's Despatch, and from their character I received the impression, he had become alarmed at the consequences of his own conduct, and was endeavouring to justify it in the best manner he could.

We afterwards had some conversation respecting the publications in our Newspapers, in which allusion was made to the explanations I had given him on this subject in December. He stated distinctly, that they were now fully aware of the difficulties which would attend any attempt to interfere with the Press, under our form of Government.

In obedience to your instructions I now read to him the greater part of Despatch No. 5; & explained the nature of the only connection which our Government has with the official paper. After having done so, I asked him to consider the consequences of an unsuccessful attempt on the part of the President to control the Globe: & told him that in that event the Editor, by publishing it to the world, would make both the Emperor & the President subjects of abuse throughout the Union. The Press was essentially free in our country. Even the Congress of the United States had no power to pass any law for the punishment of a libel on the President. This subject was entirely within the jurisdiction of the several States. That Editors were often influenced by the counsel of those whom they respected; & therefore I had communicated his request to Genl. Jackson, that he would advise the Editor of the Globe to desist hereafter from offensive publications against Russia, but even this would be a delicate matter to proceed from a person holding the office of President of the United States. I then informed him that I had been much pleased, some weeks since, to observe in the St. Petersburg Journal an official contradiction of some of the acts attributed to the Russian Government in Poland, that I had sent the paper which contained it to the Department of State, & had no doubt it would be extensively published in the United States. He expressed great satisfaction that I had taken this trouble, & said it would be very agreeable to them to have this contradiction circulated throughout our Country.

It is scarcely worth repeating that he objected in a good natured manner to the designation of Baron Sacken's note in the Despatch as a " formal note "; & said that a formal note always commenced with " the undersigned " & not the first person. This was intended to be an informal note, & that was the reason it had been submitted to Mr. Livingston before it was transmitted to the Department of State.

I congratulate you that this unpleasant affair has had such an auspicious termination. We shall have no more complaints from this quarter on the subject of publications in the American Newspapers, especially if the Editor of the Globe should be a little more circumspect in his course.

Ibrahim Pacha has refused to remain at Koniah where (and not at Aksher as I had by mistake informed you in Despatch No. 13) he continued some time after the battle. By the last advices he had reached Aksher & was in full march in the direction of Constantinople. Apprehensions were entertained that his approach might produce serious commotion in the City. His answer to the Russian Colonel Du Hammel appears to have been judicious. He said he was merely a General acting under orders from his Sovereign, & without similar orders he could not arrest his march. That even if this were not the case the country around Koniah was then exhausted of provisions, & it was necessary for the subsistence of his army that he should change his position. He must therefore either advance or retreat, & much as he respected the wishes of the Emperor of Russia, he did not believe that Monarch would expect the General of a victorious army to retreat upon his own responsibility; but he would be happy to obey the commands of his Father & sovereign if such should be his pleasure.

Count Nesselrode told me he scarcely thought it possible that the Pacha would persist in ordering his army to advance, against the wishes of all Europe. Austria had sent Colonel —— (I have forgotten his name) & England Colonel Campbell to urge him to desist. He was then hourly expecting Despatches from Alexandria.

I transmit herewith the copy of a note addressed by myself to Count Nesselrode on the 1/13 Instant with his answer of the 11/23. These notes will sufficiently explain themselves. You will observe that the Silver rooble is worth about 3 70 100 paper roobles or bank assignations which is the same thing. I also transmit the duplicate of Despatch No. 14—& copies of the docu-

ments to be appended to the duplicate of Despatch No. 9, which have hitherto been overlooked.

Deeming it inexpedient that this Despatch should be read in Prussia & at Hamburg, I shall send it under cover to Mr. Cuthbert our Consul at the latter place from whence it will go by the Steam Boat to Mr. Vail. I have requested Mr. Blake, who has behaved extremely well on this occasion, to send it by a trusty messenger from Koningsberg to Hamburg, in case no private opportunity should offer, & to draw upon me for the expense. This course will I trust meet the approbation of the Department, as it is not probable that either a French or English Courier will leave here for several weeks to come.

Yours very respectfully

JAMES BUCHANAN.

HON: EDWD. LIVINGSTON,
Secretary of State.

March 3. 1833. An opportunity entirely unexpected offers & I send the Duplicate of Despatch No 15 by an English Merchant, Mr. Thomson to Mr. Vail. Gen: Mouravieff has returned from Alexandria to Egypt. The Pacha has ordered Ibrahim to Stop & no doubt is entertained but a peace will speedily be concluded through the mediation of Russia.

J. B.

(Enclosure in No. 15.)

MR. BUCHANAN TO COUNT NESSELRODE.

Mr. Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, respectfully requests that His Excellency the Vice Chancellor would be so kind as to inform him, whether the duties levied in the Port of Odessa, on the Tonnage of Vessels, for Anchorage, for Light Houses & for the expenses of Quarantine, are estimated in silver, or in paper roobles. He makes this request because in the note which he had the honor of receiving from His Excellency, on the 24. Ultimo, the Tonnage duty on the cargo, for the benefit of the City, is alone designated as payable in assignations; whilst all the remaining charges are stated in roobles generally, without any other specification.

Mr. Buchanan embraces the present occasion of renewing to His Excellency Count Nesselrode the assurance of his most distinguished consideration.

ST. PETERSBUEG 1/13 Feby. 1833.

COUNT NESSELRODE TO MR. BUCHANAN.

En réponse au billet de Monsieur Buchanan du 1/13 Février, le Comte de Nesselrode a l'honneur de le prévenir qu'il est entendu que les droits prélevés à Odessa, sous la dénomination de droits de Tonnage, et d'ancrage, ainsique pour l'entretien du fanal et pour la quarantaine, droits dont il a

fait mention dans sa note du 24 Janvier, ont été indiqués dans cette note en roubles et copeks *en assignations*, et qu'ils sont payés de même.

A cette occasion, le Comte de Nesselrode s'empresse d'informer Mr. le Ministre des Etats Unis, d'apres des notions Ultérieurs, qu'il vient de recevoir du Gouverneur Général de la nouvelle Russie, que les mêmes droits sont aussi prélevés dans les autres ports de la Mer Noire, ainsique dans ceux de la Mer d'Asoff.

Le Comte de Nesselrode prie Monsieur Buchanan, d'agreer l'assurance renouvelée de sa considération très-distinguée.

St. Petersbourg le 11. Fevrier 1833.

FROM GENERAL JACKSON.[1]

(Private.) Washington March 21rst, 1833.

Dear Sir,

Your letter by Mr. Clay was handed me on his arrival. The fact of there being no means of conveyance, my not having ascertained Mr. Clay's determination in regard to his return to you, and the immense and heavy pressure of public business have caused me to delay my reply. Nullification, the corrupting influence of the Bank,—the union of Calhoun and Clay, supported by the corrupt and wicked of all parties, engaged all my attention. The liberty of the people requires that wicked projects, and evil combinations against the government should be exposed and counteracted.

I met nullification at its threshold. My proclamation was well timed as it at once opened the eyes of the people to the wicked designs of the nullifiers, whose real motives had too long remained concealed. The people ceased to be deluded by the promise of securing by nullification "a peaceable and constitutional modification of the Tariff." They investigated the subject, and saw that, although the Tariff was made the ostensible object, a separation of the confederacy was the real purpose of its originators, and supporters. The expression of public opinion elicited by the proclamation, from Maine to Louisiana, has so firmly repudiated the absurd doctrine of nullification, and secession, that it is not probable that we shall be troubled with them again shortly.

The advices of today inform us, that South Carolina has repealed her ordinance, and all the laws based upon it.[2] Thus die nullification, and secession, but leave behind the remembrance of their authors and abettors, which holds them up to scorn and indignation, and will transmit them to posterity as traitors to the best of governments.

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[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 185.

[2] Curtis (I. 185), in a note at this place, says: "This I believe to have been a mistake, in respect to the nullification ordinance. It was adopted by a State convention, and consequently could only be repealed by another convention. This, I believe, was not done; but the laws based upon this ordinance were probably repealed by the legislature after Mr. Clay's compromise. See the *Life of Webster*, by the present writer, Vol. I, p. 156."

The treaty is as good a one as we could expect or desire, and if you can close the other as satisfactory, it will be a happy result, and place you in the highest rank of our able and fortunate Diplomatists.

Mr. Clay has conversed with me freely, and has determined under all the circumstances to return to you. If Mr. Clay had not taken this determination, be well assured, that your request in respect to his successor would have received my most anxious attention. You should have had one in whom you could with safety confide. I had thought of Mr. Vail now at London, who has signified his inclination to remain abroad, as Secretary of Legation, when relieved by a minister.

Mr. Clay can be left as chargé d'affaires when your duty to your aged mother may make it necessary for you to return to her and your country.

Knowing as I do, that you will not leave your post, until you bring to a close the negotiation now under discussion, I have said to the Secretary of State to grant you permission to return whenever you may ask it. But should an emergency arise which will render it inconvenient, if not impossible, for you to write and receive an answer from the State Department before, from the feeble health of your mother, it may be necessary for you to return, you will consider yourself as being hereby authorised to leave the court of Russia & return, leaving Mr. Clay in charge of our affairs there.

I must refer you to Mr. Clay, and the newspapers, which I have requested the Secretary of State to send you, for the news and politics of the day. I must however add that, in the late election, good old Democratic Pennsylvania has greatly increased my debt of gratitude to her, which I can only attempt to discharge by renewed and unceasing vigilance and exertions in so administering the government as to perpetuate the prosperity and happiness of the *whole* people.

Accept of my best wishes for your health and happiness, and for your safe return to your country and friends. Give my kind respects to Mr. Barry and believe me to be sincerely your friend

ANDREW JACKSON.

THE HONBLE
JAMES BUCHANAN
Envoy extraordinary
& minister plenipotentiary
at Russia.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 16.) ST. PETERSBURG 10 April, N. S. 1833.

SIR/

I embrace the opportunity presented by the departure of an English Courier to address you a few lines; but I have nothing of any importance to communicate, except an official exposition

[1] MSS. Department of State.

of the conduct of this Government in relation to Turkish affairs. I enclose you the St. Petersburg Journal of Friday last in which it was published. You will perceive that the Emperor, in the conclusion of the article, declares that he has instructed his minister at Constantinople to announce formally, that he will not withdraw his forces, "until Ibrahim shall have evacuated Asia Minor, repassed Mount Taurus, and the Pacha of Egypt shall have subscribed the conditions proposed by the Porte."

It is not believed, among the best informed persons here, that the Turkish question will disturb the general peace of Europe. It seems that all the great Powers are agreed upon the conditions of the Treaty to be made between the Sultan & the Pacha. The contest between Russia & France appears only to be, which of them shall have the glory of being considered the successful mediator. If Admiral Roussin had behaved, as the Paris Journals boast that he did, he would have acted like an Ambassador of Napoleon, instead of Louis Philip.

I send you also the Journal of yesterday, containing an official article on Polish affairs.

I have received no Despatch from the Department of a later date than the 3d of January. (No. 7.) I am anxiously expecting your answer to my Despatch No. 8; but at the same time dreading, lest it may be transmitted through the Russian Post Office.

I was informed some time ago by a merchant of this City, that Mr. Clay had arrived at New York on or about the 18th of February. By every post since, I have been expecting to hear from him, though hitherto I have been disappointed.

Yours very respectfully

JAMES BUCHANAN.

HON: EDWARD LIVINGSTON
Secretary of State.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(Supplement to No. 16.)

St. Petersburg 10 April 1833.

Sir/

Upon taking my Despatch of this day to the English Minister, I learned that Count Nesselrode had received Despatches, informing him that the aid-de-Camp of Admiral Roussin had returned from Alexandria to Constantinople with the intelligence, that the Pacha had refused to accept the terms of peace agreed upon between the Sultan & the Admiral. Mehemet demands the whole of Syria, & requests the Admiral to use his influence with the Sultan to obtain it for him. Ibrahim is again in motion, having received orders from his father to resume the offensive. It would seem that the Pacha is determined to run into the lion's mouth: still I think he will desist.

The French Ambassador ought never to have attempted to take this business out of the hands of the Russians, unless he had previously known he would be successful with Mehemet. He has placed both himself & his country in an awkward position, especially as such extravagant accounts of his Diplomatic triumphs had been published in the Paris Journals.

Yours very respectfully

James Buchanan.

Hon: Edward Livingston
Secretary of State.

TO JOHN B. STERIGERE.[2]

St. Petersburg 19th May 1833.

My dear Sir/

I received your first & only letter of the 19 & 22 Feb: on the 19 April. I need not say that it was very acceptable. Your former letter must be either at the Department of State or in New York. If I may judge of Mr. L. from my own

[1] MSS. Department of State.

[2] Buchanan Papers, Historical Society of Pennsylvania. Extract printed in Curtis's Buchanan, I. 189–190.

experience he is wholly unfit for the office he holds. He is either too old, or too much engrossed with other affairs. There is no department in the Government where reform is more wanted. Between ourselves the Treaty appeared almost providential. It was made in opposition to the general policy of this Government, after one solemn refusal in writing, & the Imperial Ministry at last being divided on the question.

I was exceedingly sorry to hear the result of your rail road speculation. At the time I had my own misgivings on the subject. There is almost always a time between the commencement & completion of such works when the stock is depreciated much below its real value. I hope this may be the case with your rail road. I think if I were in your situation I should hold on by all means. I hope with the blessing of God to return to my native land either this Fall or next Spring. After that you shall not want money to make little speculations occasionally. In the mean time I shall send to Mr. Reynolds by the present opportunity a draft for $800 from Major Barry's son on his father & shall direct Mr. R. to add $200 to it & advance the amount to you in case you should request it. I am sorry that at this moment it is out of my power to offer you more. On or before next April however I could add another thousand to it, perhaps $1500. Now, Sir, I can assure you I should much rather you would accept this loan than not. It would afford me sincere pleasure to be able to promote your prosperity in any manner, & I am only sorry that I have so little in my power. I assure you I shall ever remember your friendship with gratitude, & I trust yet that I may have the pleasure of spending many a happy hour in your society. Our "Auld lang syne" has many charms for me. Be not discouraged. You are still well off even if you should lose as much as you anticipate. Look at the numbers in a worse situation than yourself & thank God for what you have. I consider your professional success as almost certain. I know the stuff of which many men are made who have become distinguished at the law & judging by comparison you must succeed. I am not disappointed in hearing your complaints. The law is not to be mastered in one 2, 3, or 4 years. Be patient & industrious until I shall again have the pleasure of seeing you.

I think you are mistaken in supposing I should have been elected to the Senate had I been at home. The opposition against me from many causes would have been too strong. Indeed I

have an impression that my public career is drawing near its close, & I can assure you this feeling does not cost me a single pang. All I feel concerned about is to know what I shall employ myself about after my return. To recommence the practice of the law in Lancaster would not be very agreeable. If my attachments for that place as well as my native State were not so strong, I should have no difficulty in arriving at a conclusion. I would at once go either to New York or Baltimore, & even if I should ever desire to rise to political distinction, I believe I could do it sooner in the latter place than in any part of Pennsylvania. What do you think of this project? Say nothing about it. I have not written a word on the subject to any other person. I see the appointment of Judge Sutherland announced some weeks ago. Judging from the feelings displayed in the election of printers to Congress, I should not have been astonished at his election as speaker by the next House of Representatives.

The winter here has been very long but I have not at all suffered from the cold. The great thickness of the walls of the houses, their double windows & doors, & their stoves built of tile render their houses much more comfortable in very cold weather than our own. They are always heated by a thermometer & preserved at an equal temperature. Indeed I have suffered more from the heat than the cold during the winter. But its length has been intolerable. The Neva was frozen for nearly six months. It broke up on the 25 ultimo; but still until within a few days there is a little ice occasionally running which comes from the Lake Ladoga. On the 9th Instant the Navigation opened at Cronstadt. Four noble American ships led the way & with a fine breeze & under full sail, they passed through the ice & made an opening for the vessels of other nations. The character of our masters of vessels and super-cargoes stands much higher here than that of the same class belonging to any other nation. They have much more intelligence.

This Court requires a man of peculiar talent. There are but few of our countrymen fit to be sent here as minister. Here the character of the country depends much upon that of the minister. The sources of information respecting our republican institutions which are open throughout the rest of Europe are closed in this Country. A favorable impression must be made upon the Nobility by personal intercourse; & in order that this may be done it is absolutely necessary that the minister should occasionally entertain them & mix freely in their society.

Such is the difference between Russian & American society I am satisfied that Levett Harris would be a more useful minister here than Daniel Webster. I make this remark, on the presumption that for years to come we shall have no serious business to transact.

After looking about me here I was much at a loss to know what course to pursue. Without ruin to my private fortune I could not entertain as others did. Not to entertain at all, I might almost as well not have been here except for the Treaty. After some time I determined that I would give them good dinners in a plain republican style for their splendid entertainments & the plan has succeeded. I have never even put livery on a domestic in my house,—a remarkable circumstance in this Country.

I think I may say, I am a favorite here, & especially with the Emperor & Empress. They have always treated me during the past winter in such a manner as even to excite observation. I am really astonished at my own success in this respect, for in sober truth I say that in my own opinion I possess but few of the requisites of being successful in St. Petersburg society. I trust & hope that I may be permitted to return to my beloved native land this fall, & if Providence should continue to bless my endeavors, I think the character of the United States will stand upon a fairer footing with his Imperial Majesty than it has ever done since his accession to the throne.

May 22. Mr. J. Randolph Clay returned here on the 10th bringing me a great number of letters from my friends & the President's permission to return home this Fall. God willing! I shall be with you about the end of November. These letters hold out flattering prospects of my election to the Senate at the next Session. I confess I consider this event very doubtful & shall take care not to set my heart upon it.

Mr. Barry leaves me to-day for London, & I have no time to add any thing more. Please to write soon & believe me ever to be your sincere friend

James Buchanan.

John B. Sterigere Esq.

P. S. Remember me to Paulding, Patterson, Kittera & my other friends. I wrote once to the latter but have never received an answer from him.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 17.) LEGATION OF THE UNITED STATES
ST. PETERSBURG 22d May N. S. 1833.

THE HONORABLE EDWARD LIVINGSTON
Secretary of State

SIR

Mr. Clay arrived in this City on Saturday last the 18th Inst., by the Steamer from Lübeck, bringing with him your Despatches Nos. 8, 9 and 10, together with my letter of recall. For the latter I feel myself under renewed obligations to the President; and he may rest assured that the discretion with which he has entrusted me, as to the time of it's presentation, shall not be abused. His approbation of my conduct in the negotiation of the Commercial Treaty affords me the most lively gratification.

Although you have not noticed the objections, contained in my Despatch No. 8 dated on the 19/31 of October last, to the adoption by Treaty with Russia of the principle, "that free Ships shall make free goods"; yet from the tenor of your Despatch No. 9, I might have inferred that they had been examined & overruled. Mr. Clay, however, has removed all doubt upon the subject. He tells me that both the President and yourself informed him, that these objections were submitted to the Cabinet which had resolved to adhere to the ancient policy of the Country, as displayed in former Treaties concerning Neutral rights. My duty, therefore, as the Representative of the Government, is perfectly plain, and it shall be performed. I very much doubt, however, whether I shall be able to accomplish the wishes of the President in this respect.

I have been expecting, with very great anxiety, ever since the 22d of February, the day on which your Despatch No. 7 arrived, an answer to my Despatch No. 8. This anxiety arose from a conviction that if the President thought proper, after the receipt of Count Nesselrode's note of the 10 22 of October last, to instruct me to renew the negotiation, the best time to make an attempt would be whilst the Turkish question remained unsettled. As long as any probability existed that this might involve Russia in a war with France and England, the Emperor

[1] MSS. Department of State. An extract from this despatch is printed in H. Ex. Doc. 111, 33 Cong. 1 Sess. 64-65.

might have been willing to conclude such a treaty. But the auspicious moment, if ever it existed, I fear has passed,—the Turkish question is now settled, and a favorite object of the policy of this Government has for sometime been to detach England from France. It is not then probable, under such circumstances, that they would, at present, be willing to establish principles of public law in a Treaty with the United States, against which England has been so long and so decidedly opposed.

I was fearful lest your omission to acknowledge the receipt of the Commercial Treaty and to inform me of it's ratification might have given offence to these jealous people. I have no doubt they expected that I would, sometime ago, have made a communication to the Foreign Office on the subject. The news of Mr. Clay's arrival in New York reached here on the 4th of April. Even the Emperor himself, both on the 29th of that month and the 3d of May, asked me, with a good deal of earnestness in his manner, if I had heard from the United States. On the latter occasion I told him that I was daily expecting Despatches; but none had yet arrived. I had learned, however, from other sources that the Treaty had been received and ratified and had given great satisfaction. He expressed his pleasure at this information; and in the course of the conversation he declared, in strong terms, how much he was gratified to hear that the South Carolina question had been amicably adjusted, and that all our domestic differences were at an end.

On Monday the 20th I had an interview with Count Nesselrode, and informed him that the Treaty had given great satisfaction to the President, by whom it had been submitted to the Senate without delay: and that it had been, immediately and without the slightest difficulty, ratified by that Body. He said it afforded him much pleasure to learn that it had reached the United States before the end of the Session of Congress, and had met such a favorable reception from the President and Senate. We had much conversation of a most friendly character, and such as naturally arose out of the subject; which it would be useless to repeat. When I informed him that if Prince Lieven had sent the ratification of the Emperor, to Liverpool, according to our understanding, instead of delivering it to Mr. Vail, it would have reached Washington before Mr. Clay's departure: he said he could not imagine why the Prince had not followed his instructions in this respect. They had been given in express terms.

I enquired the news from Constantinople. He said he con-

sidered the question as now settled. Mehemet would get all he asked. He had insisted upon the cession of the Pachalik of Adana, on account of the timber which it produced, (I presume for ship building) and the Sultan had yielded. This for some time had been the only remaining question. I then enquired, what was precisely the territory to be ceded; and he said the whole of Syria together with Adana; and these were to be held of the Sultan in Suzerainté, subject to the payment of a tribute. I observed it was probable this tribute would not long continue to be paid, as the Turkish Empire seemed to be crumbling to pieces. He said it was impossible to make any certain calculations for the future. The Egyptian Government was of such a character that its strength and vigor depended mainly upon the life of Mehemet. He was now an old man and his tyranny in Egypt was very oppressive. That the Egyptian people were all compelled to be his laborers, and the cotton and rice which the Country produced all belonged to him. He disposed of them for his own advantage—and exacted from the people such prices as he thought proper for the articles which they required.

I replied that this was very true; but yet it seemed that the Syrians and the people of Asia Minor generally preferred his dominion to that of the Sultan. He said this was at first the case; but public opinion had begun to change. The exactions of Ibrahim's troops had produced much dissatisfaction. He then remarked that the sole object of the interference of Russia had been to sustain the Sultan, and prevent Ibrahim from making himself master of Constantinople. This object had been accomplished and they were satisfied:—but from the whole tenor of his conversation, I doubt whether they are much pleased with the arrangement.

We then again returned to the Treaty: when I observed that it had afforded me great pleasure to be instrumental in making this Treaty. That this pleasure would have been much enhanced had I been equally successful in the negotiation concerning Maritime rights. I entertained no doubt however that this Treaty would also be eventually concluded; as it was so clearly for the mutual benefit of the two Nations. I adverted to the application which had been made on the part of the Imperial Government, in 1828, whilst engaged in war with Turkey, to the President, to issue orders to prevent our vessels from attempting to violate the rights of blockade or to carry contraband articles. It was true these orders had been issued cheerfully

and promptly, because the two Governments are in perfect accord upon these subjects. But such was the distance between the two countries, that Russia might long be engaged in hostilities, before a similar application could reach Washington and similar orders could be received by our merchant vessels scattered over the World. If these principles were embodied in a Treaty—the Treaty would then become the guide. It would operate at all times and in all places, and prevent disputes from arising between our merchant vessels and the Russian ships of war.

When I discovered he was not disposed to enter upon the subject, I observed that these remarks were made merely en passant; and he then immediately changed the topic of conversation.

Upon this occasion I delivered him a copy of your official circular dated the 28 March 1833, in relation to the style in which the President ought to be addressed by foreign Governments.

Upon taking leave, he said he felt much indebted to me for communicating such agreeable and satisfactory information from the United States.

Baron Sacken arrived here in the same Steam Boat with Mr. Clay. I have not yet seen him.

This Despatch will be carried by Mr. Barry to London who at my request has agreed to take this City on his way to France and Italy. He has, during the absence of Mr. Clay, performed the duties of Secretary of Legation to my entire satisfaction. Indeed his whole conduct has been such as to meet my warmest approbation. I think his expenses to London ought to be paid:—but this I shall leave to the Department. They will not exceed $120.

Yours very respectfully

JAMES BUCHANAN.

TO GENERAL JACKSON.[1]

ST. PETERSBURG, 20 May, 1833 N. S.

DEAR GENERAL,

I had the pleasure of receiving, by Mr. Clay, your kind letter of the 21 March. And here allow me to tender you my grateful thanks for the permission which you have granted me

[1] Jackson MSS., Library of Congress. An extract is printed, with many inaccuracies, in Curtis's Buchanan, I 174-175.

to return home. Indeed, for some time, I had scarcely indulged the hope that I should be allowed to leave St. Petersburg before the next spring; this permission therefore was a most agreeable surprise, and adds another to the many obligations which I owe to your kindness. I hope I may yet have an opportunity of displaying my gratitude by my actions.

Although I shall leave St. Petersburg with pleasure, yet I shall always gratefully remember the kindness with which I have been treated here. My great objection to the country is the extreme jealousy and suspicion of the Government. A public minister, in order successfully to discharge his duty and avoid giving offence, must conceal the most ennobling sentiments of his soul. We are continually surrounded by spies both of high and low degree. You can scarcely hire a servant who is not a secret agent of the police.

There is one mitigating circumstance in Russian Despotism. In other portions of Europe, we behold nations prepared and anxious for the enjoyment of liberty, and yet compelled to groan beneath the yoke. No such spectacle is presented in this country. The most ardent republican, after having resided here for one year, would be clearly convinced that the mass of the people, composed as it is of ignorant and superstitious barbarians who are also slaves, is not fit for political freedom. Besides they are perfectly contented. The Emperor is the very beau ideal of a sovereign for Russia; and in my opinion, notwithstanding his conduct towards Poland, he is an able and a better man than any of those by whom he is surrounded. I flatter myself that a favorable change has been effected in his feelings towards the United States since my arrival. Indeed, at the first, I was treated with great neglect, as Mr. Clay had always been. I was glad he returned. It would be difficult to find a more agreeable Secretary of Legation. I also entertain a very high opinion of Mr. Vail.

I sincerely rejoice that our domestic difficulties seem almost to have ended. Independently of their fatal influence at home, they had greatly injured the character of the Country abroad. The advocates of despotism throughout Europe beheld our dissentions with delight; whilst the friends of freedom sickened at the spectacle. God grant that the restless spirits which have kindled the flame in South Carolina may neither be able nor willing to promote disunion, by rendering the Southern States disaffected towards the best of Governments.

Whilst these dissentions are ever to be deplored in themselves, they have been most propitious for your fame. We generally find but few extracts from American papers in the European Journals; but whilst the South Carolina question was pending, your proclamation, as well as every material fact necessary to elucidate its history, was published on this side of the Atlantic. I have a hundred times heard, with pride and with pleasure, the warmest commendations bestowed upon your conduct; and have never met with a single dissenting voice. I was obliged, the other day, to laugh heartily, at the sentiment expressed by a Russian Nobleman which he considered the highest commendation. He said it was a pity such a man as you had not been King of England instead of William the fourth: for then Ireland would have been kept in good order and O'Connell would have long since been punished as he deserved. I might have told him you were not of the stuff of which Kings are made, and that if you had possessed the power, Ireland would have had her grievances removed and received justice. That then there might have been no occasion for the exercise of severity.

I fear I will not be able to conclude the treaty concerning maritime rights, though I shall use my best exertions. My late attempt to introduce the subject was not very successful, as you will have seen from my last Despatch.

I have now, after much reflection, determined on my plan of operations. It would not be consistent with the high character of our Government, and with what I am confident would be your wishes, that I should make another direct official proposition to conclude this Treaty, without a previous intimation that it would be well received. We might thus be subjected to another direct refusal and incur the charge of importunity. It is, therefore, my intention to present my views of the subject in the form of an unofficial note, and to express them with as much clearness and force as I am capable [of]. I shall not in this note seek a renewal of the negotiation; though I shall leave it clearly to be inferred that such is my desire, neither shall I solicit an answer. Afterwards if they should not move in the business within a reasonable time, nor give me any intimations on the subject, it would neither be proper nor dignified to press them further.

I am convinced they are endeavoring to manage England at present, and that this is an unpropitious moment to urge them to adopt principles of public law which would give offence to that nation. Besides, Russia has now a large navy, and but a small

commercial marine; and it is not for such a Power as she now believes herself to be, to desire to change the law of nations in such a manner as to abridge her belligerent rights. The principle "that free ships shall make free goods," will always be most popular with nations who possess a large commercial marine and but a small navy to protect it, and whose policy is peaceful. But I shall do my best.

I hope this question may be determined by the beginning of August, as I should then have the opportunity of seeing something more of Europe, and yet reach the United States about the end of November. By the last accounts, my mother's health was decidedly better, so that on that ground I need not so much hasten my return.

I have received many letters which give me strong assurances that I shall be elected to the Senate. I confess, however, that I feel very doubtful of success. The men in Pennsylvania, who have risen to power by the popularity of your name, while in heart they are opposed to you, will do every thing they can to prevent my election. The present Governor is influenced by their counsels, and his patronage is very great and very powerful. Besides, the Nullifiers and their organ, the *Telegraph*, will show me no quarter. Thank God! I know how to be content with a private station, and I shall leave the Legislature to do just as they please. *His Honor Judge Sutherland* will, I have no doubt, be early in the field against me.

Our excellent consul here is in very bad health from the severity of the climate. His physician says that he must travel, and that immediately: but I entertain some doubts whether he has sufficient strength left for this purpose. It is said, however, that he was restored once before by a change of climate, when in an equally weak condition. He purposes to set off in a few weeks, and Mr. Clay, who will have little else to attend to, will do his business cheerfully during his absence. I sincerely wish he could obtain a situation in a milder climate. It would be a most happy circumstance for the commerce of the United States if all our consuls were like Mr. Gibson. After sending my note to Count Nesselrode, I intend to visit Moscow for a few days, as he is to be absent himself. Please to remember me kindly to the members of your family, and to Major Barry, Mr. Taney, Mr. McLane and Mr. Woodberry, and believe me ever to be sincerely and respectfully your friend.

James Buchanan.

TO COUNT NESSELRODE.[1]

(No. 27.) St. Petersburg May 18/30, 1833.

Your Excellency

Permit me to address you a few remarks in relation to the Treaty concerning Maritime rights which I had the honor of proposing to Your Excellency, upon a former occasion. These remarks ought to have been made previous to the date of your note of the 10/22 October last. That they were not, has arisen from misapprehension. I then only expected an answer to the proposition concerning the Commercial Treaty; and was much disappointed when I found that your communication embraced both the subjects.

By the present note, I do not propose to renew the negotiation concerning Maritime Rights, nor shall I refer to it hereafter, unless I should previously receive an intimation that it would be acceptable. My stay in St. Petersburg will probably not be prolonged many months: and my desire to do my duty, and by all the means in my power, to confirm and perpetuate the bonds of friendship which now so happily unite the two countries must plead my apology for addressing Your Excellency once more upon this subject, before my departure.

The three objects of the proposed Treaty were, to define the nature of legal blockades, to enumerate the articles constituting contraband of war, and to establish the principle that "free ships shall make free goods." The proposition formerly made by the Government of the United States, through Mr. Middleton, to abolish private war upon the ocean, has been abandoned, since the receipt of Your Excellency's answer to that gentleman of the 1st of February 1824.

In regard to the two first objects just mentioned, not much need be said. The general principles maintained by the Imperial Government, and by that of the United States are in perfect accord, on the subjects of blockade and contraband. The only question is, would it be wise to give these principles the sanction of a Treaty?

Independently of the general advantages of conventional stipulations, over the often ill defined and uncertain rules of the

[1] MSS. Department of State; printed, also, in H. Ex. Doc. 111, 33 Cong 1 Sess. 66–68. A copy of this note accompanied Buchanan's despatch No. 18, June 4, 1833, infra, p. 346.

law of Nations; does not the great distance between the two countries present, in itself, peculiar reasons why these subjects should be regulated by Treaty? It would be impossible to transmit information of the declaration of a war by Russia from St. Petersburg to Washington, and from thence to communicate the necessary orders consequent thereon to the commanders of American public and private vessels, until several months had elapsed after the commencement of hostilities. In the mean time, our merchant vessels must be left without any certain guide for their conduct towards Russia as a belligerent. Under such circumstances it is almost impossible, that disputes should not arise. Attempts would be made on the one side, whether ignorantly or by design, to violate belligerent rights; whilst on the other, it is natural to suppose that these rights would be enforced in all their vigor. Besides, at the commencement of hostilities, the parties might entertain different opinions as to their respective rights, and duties under the law of Nations, and at such a crisis, this would inevitably lead to unpleasant consequences. Modern history fully established that these apprehensions are not without foundation.

If these principles, however, were consecrated by a treaty with Russia, as they have been between the United States and many other nations, no misunderstanding could ever arise. The Treaty would then become the permanent rule. It would be published and known, and all our merchant vessels would be regulated in their conduct by its provisions. It would be the guide at all times and in all places. A war, no matter how suddenly it might arise, could never produce any embarrassment. Belligerent as well as neutral rights would then repose upon a firm and stable foundation. Such are the habits of American citizens, that they take care to understand all the treaties by which their conduct must be regulated, and yield them a cheerful obedience.

It was not until the 16/28 of July 1828, that Baron Krudener was enabled to communicate to the Secretary of State, at Washington, the circular containing the rules by which Russia would be guided in her conduct towards neutrals during the Turkish war; although that circular bore date the 17th of April preceding. As much time must probably have elapsed before the necessary instructions of the President could have reached our vessels in the Mediterranean. Thus they were left, for six months, without any specific rule for their conduct in this emergency.

All these difficulties might, at once, be obviated and the conduct of the two Nations towards each other, in regard to blockades and contraband, might be clearly defined, by a conventional agreement similar to that of June 1801, between Russia and England. The principles of that Treaty were again asserted by the Imperial Government in 1828; and in relation to these two subjects, they are nearly the same which have always been maintained by the United States.

To address an argument to Your Excellency, in support of the general principle.—that the flag ought to protect the cargo and that free ships should make free goods, would indeed be a work of supererogation.

The maintenance of this principle has contributed much to the glory of Russia, and furnished one of the brightest pages in her history. In the wars which arose out of the American as well as the French revolution, she greatly distinguished herself by the leading part which she took in it's defence. All those who can justly appreciate the vexations and outrages which neutral commerce has suffered, from the practice adopted by one or two belligerents of capturing neutral vessels, upon the high seas, merely because the property of enemies might be found on board, will ever award to her exertions, the fame which they have so justly deserved. The inquest to which the neutral is thus subjected, so contrary to the attributes of national sovereignty, has been often abused by officers unworthy of their trust, for the purposes of private gain and extortion.

Indeed from it's very nature this power must always be liable to great abuse. Surely the flag of an independent nation ought to protect the private property of enemies, on the water as it does on the land, with the single exception of contraband of war.

At the first view, there is force in the objection, that it would be useless for Russia and the United States alone, without the concurrence of other Powers, to establish the principle by Treaty, that "Free ships shall make free goods." But would the example of two such nations produce no effect upon the rest of the civilized world? Would it not have great influence in finally rendering this principle universal? The Government of the United States believe that such would be its natural tendency.

But such a Treaty would not be confined in it's beneficial consequences to the example. Whilst it could not compromit Russia in her relations with any other Power, it would indirectly

extend it's protection, so as to exempt from capture the property of Russian subjects when on board of American vessels, by the ships of war of all those Powers with whom the United States now have similar Treaties. These Powers are Prussia, the Netherlands, Sweden, Spain, Colombia, Central America, Brazil and Mexico. Thus in the event of war between His Imperial Majesty and either of these Nations, the property of Russian Merchants could be carried under the neutral flag of the United States, free from all danger of capture. Besides, we confidently expect, ere long, to conclude similar Treaties with other Powers, both in Europe and America; and each one added to the list would afford additional security to such property, and, in case of war, diminish the rate of insurance. These might become important advantages to both nations, considering the great and rapidly increasing value of the Russian productions both of agriculture and manufactures which are now transported to the United States and other Countries, by American vessels.

These views would have been long since submitted more in detail, but for the cause I have already indicated. I ought perhaps to state, as an additional reason, that when I left the United States, the President was under the impression, from Baron Krudener's note to Mr. Brent of the 16/28 August 1828, and the subsequent conferences between that gentleman and Mr. Van Buren, that the Imperial Government were already prepared to enter upon the negotiation of a Treaty concerning Maritime Rights.

In conclusion, I beg Your Excellency to receive the assurance of my most distinguished consideration.

James Buchanan.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 18.) St. Petersburg 4 June N. S. 1833.

Sir,

I transmit you the copy of a note which I addressed to Count Nesselrode on the 30th ultimo.[2] Wishing to commit the Government as little as possible, in making a new proposition, so soon after the rejection of the former, I have given to this note an informal character. It would have been longer, but I deemed it better, under existing circumstances, to present a few such views of the subject as I thought best calculated to strike the Emperor's mind, than to write a treatise which he might never read. This was the more necessary, because any slight hope of success I may entertain depends more upon him than upon his ministers. Besides, Mr. Van Buren's instructions to Mr. Randolph, which have long been in possession of Count Nesselrode, exhaust the subject, upon its general principles.

The note, as you will perceive, contains substantial, though not formal answers to former objections.

I send you the copy of a letter from Mr. Schielin our Consul at Taganrog, dated the 14 26 February 1833, of my answer of the 7 19 March, & his reply of the 25/7 April May.

I also transmit an extract from a letter of Mr. Ralli our Consul at Odessa, dated 17 April. O. S. 1833, & a copy of my answer of the 25 May, N. S.

Yours very respectfully

James Buchanan.

Hon: Edwd. Livingston
Secretary of State.

(Enclosure in No. 18.)

MR. BUCHANAN TO MR. SCHIELIN.

St. Petersburg 7 19 March 1833.

Sir:

Your favor of the 14 26 February reached me on the 26 Feb. 10 March I am sorry to learn that your own health and that of your family have rendered it necessary that you should leave Taganrog for the present. If your

[1] MSS. Department of State. Extract printed in H. Ex. Doc. 111, 33 Cong. 1 Sess. 65.

[2] Supra, p. 342.

absence is to be but temporary I can perceive no objection to the arrangement which you have made with Mr. Chrisman to perform your duties during your absence. If on the other hand, you should change your abode and remove permanently from the Empire of Russia, the Government of the United States would probably think it expedient to appoint a Consul resident at Taganrog.

I shall by the first opportunity, transmit to Washington a copy of your letter and this answer.

Yours very respectfully

(signed) JAMES BUCHANAN.

HENRY SCHIELIN ESQR.

[United States Consul at Taganrog.]

(Enclosure in No. 18.)

MR. BUCHANAN TO MR. RALLI.

AMERICAN LEGATION

ST. PETERSBURG May 25. 1833.

SIR,

I have received yours of the 17th April in which you request me to inform you what are the fees to which Consuls of the United States are legally entitled. This question will be best answered by giving you extracts from the Acts of Congress upon the subject. They declare as follows:

Every Consul or vice-consul may take the following fees of office, for the services which he shall have performed: For authenticating, under the consular seal, every protest, declaration, deposition, or other act, which captains, masters mariners, seamen, passengers, merchants, or others, citizens of the United States, may respectively make, the sum of two dollars:

For inventorying, selling, and finally settling and paying, or transmitting, the balance due on the personal estate left by any citizen of the United States dying within the limits of his consulate, five per centum on the gross amount of such estate: For taking into possession, and otherwise proceeding on, any such estate which shall be delivered over to the legal representative before a final settlement of the same, two and a half per centum on such part as shall not be in money, and five per centum on the gross amount of the residue.

Every Consul, Vice-Consul, commercial Agent or vice-commercial agent, may take for every certificate of discharge, of any mariner in a foreign port, fifty cents; and for commission on paying and receiving the amount of wages payable on the discharge of seamen in foreign ports, two and a half per centum: For every verification and certificate, made under act of first March, 1823, regulating the collection of duties, before a consul or commercial agent, two dollars: *provided*, each shipper shall have the right to include all articles shipped by him in the same Invoice.

The consuls and vice-Consuls shall give receipts for all fees which they shall receive by virtue of law, expressing the particular services for which they are paid.

There is no fee allowed by law for merely receiving on deposit the ship's papers: but for the certificate of such deposit given to the captain under the seal of office, the practice of Mr. Gibson of this city who is a

correct and experienced officer has been to charge two dollars. Indeed he charges two dollars for each separate consular act under seal, except for certificates of the discharge of Mariners. The law makes no allowance for consular signatures without a seal, nor can I conceive of any case in which they would be proper. You are entitled to no more than $2.00. for the authentication of any protest. Should you draw it up and prepare it yourself, your compensation for this service would be a subject of private agreement, not of a Consular charge. Mr. Gibson tells me, however, that in Russia, all protests ought to be prepared by a Notary Public, in the first instance. They are afterwards authenticated under the consular Seal by certifying that this Notary is duly commissioned and that full faith and credit ought to be given to his official seal.

In a late circular addressed by the Secretary of the Treasury to the Consuls of the United States, it is ordered, that every Invoice whether the same be of goods paying duties *ad valorem* or *specific*, should be accompanied by a certificate, under seal, from the Consul at the port from whence they are shipped, of the true value of the Spanish dollar at the date of the Invoice. A form of such certificate as is given by Mr. Gibson is enclosed. He charges on granting the same $2.00. (Two dollars)

Mr. Clay, the Secretary of this Legation, returned here from Washington on the 18th Instant. He carried there a Treaty of Commerce and Navigation between the United States and Russia which was concluded in December last. This Treaty has been ratified by both Governments, and I daily expect to hear that these ratifications have been exchanged. As soon as I have it in my power, I shall take pleasure in furnishing you a copy.

I feel myself much indebted to you for the interesting description of Odessa and the nature of it's trade contained in your letter of October last. The map was also very acceptable and satisfactory.

Accept my best wishes for your welfare.

Your obedt. Servt.

(signed) JAMES BUCHANAN.

DIARY, JUNE 4–27, 1833.[1]

Tuesday at 8 P. M., June 4, 1833

Left St. Petersburg and arrived at Novogorod about 12 midi on Wednesday. Visited the church of St. Sophia, said to be founded by Wladimir in 1040. His tomb, at which they say miracles are wrought, is in it. The paintings are numerous and barbarous. The interior has a rude magnificence. Went into

[1] Curtis's Buchanan, I. 193–204. Among Buchanan's papers, there is a paper in French, in his own handwriting, under the dates of Jan. 1/13, 1833, and Feb. 7, 1833, in which he describes (1) the New Year's festivities at the Russian court, and (2) a visit to Cronstadt. The French is such as would be written by one learning the language.

the *sanctum sanctorum*, where women are never admitted. There they consecrate the Eucharist in the Greek Church, out of the view of the people: unlike the Latin in this respect. The priest afterwards carries it out on his head, to be adored by the people.

The sides of the western door are lined with bronze, from which jutted out in bronze a number of strange and barbarous figures not unlike those of Mexico. They must have been Christian and even Russian in their origin, as one of them represented an Archimandrite in full dress. The inscriptions were Sclavonian. Our guide said they were conquered from the Swedes by St. Wladimir. The church is west of the river. It and several other buildings are surrounded by a brick wall, with turrets, etc., etc., about twenty-five feet high and eighteen thick and nearly a mile in circumference, a ditch beneath.

There are also the remains of another rampart and ditch, a considerable distance from the former. The church of St. Sophia is surrounded by a dome and four cupolas of the character peculiar to Russia.

The former is gilt and the others plated with silver, so they say. The celebrated monastery of St. Anthony we did not visit. There is scarcely any appearance of ancient ruins to indicate the former greatness of Novogorod. This arises from the nature of the materials of which it was built.

On Wednesday night we stayed at Zaitsova, an excellent inn.

The public houses are generally bad, beyond what an American can have any idea of; nevertheless, a few on this road were good. This inn is maintained in a degree by the emperor.

The peasants are jolly, good-natured fellows, who drive furiously and seem happy. They are all rogues, nevertheless. In appearance and conduct they are very unlike those of Petersburg.

Saturday, June 8

We arrived in Moscow at 10 o'clock A. M. The road is the best over which I have ever travelled. It is macadamized in the most perfect manner, and the traveller pays no toll. About 175 versts, or five posts, are yet unfinished between Chotilova and Tiver. This fraction is the old road and partly composed of sand, partly of the trunks of trees laid across, and partly of large stones, and in some places it is very bad. The posting is eight cents per verst for four horses and ten cents for the post adjoining St. Petersburg and Moscow.

The horses, though mean in their appearance, travel with great speed. They uniformly place the four abreast when travelling by post in Russia. The post-boys always cross themselves devoutly before ascending their seats; though they, in common with all the other Russian mousiques whom I have ever met, will cheat you if they can.

At every post station we found a number of these—with their long beards and their tanned sheepskins—ready to grease the carriage or perform any other menial service. At night they lie down on the road and around the post-houses, and sleep on the ground. Indeed Russians of the highest class appear to know little of the comforts of a good bed.

The country presents a forlorn aspect for 150 versts from St. Petersburg. It is both poor and flat, and the villages have a wretched appearance. They all consist of log huts with their gables towards the street. As you approach Waldi, the country becomes somewhat better and more undulating, and more attention seems to have been paid to its cultivation. It afterwards resumes its level appearance as you advance to Moscow, but still it is much better in every respect than near St. Petersburg. With a single exception we did not observe a nobleman's seat along the whole route, and this one had a mean appearance. Nothing affords variety to the dull and monotonous scenery except the churches, which present the only interesting objects in the landscape.

Tiver is the principal town of the government of that name. It was finally conquered in 1483. The city is handsome and has the appearance of prosperity. It is situated on both sides of the Volga. When I approached this river, I could not resist the feeling of how strange it was that I should be on its banks.

Sunday afternoon, 9th.

We went to the promenade, at three versts from the city, on the Petersburg road.

Monday morning, 10th.

We visited Madame S—— and had some conversation with her which would have been agreeable but for the constant interruption of a parrot which screeched as if it had been hired for the occasion. She had accompanied Mr. Wells of Philadelphia last year to the monastery of the Trinity. Her son is to go with us to the Kremlin to-morrow.

The appearance of Moscow must have greatly improved

since its conflagration in 1812. It has lost, however, in a great degree, that romantic and Asiatic appearance which it formerly presented. The cumbrous and rude magnificence of palaces irregularly scattered among Tartar huts, has given place to airy and regular streets in all directions. It appears to be in a prosperous condition. That which chiefly distinguishes it from other cities is the immense number of churches. Their cupolas, of all colors and of all forms, rising above the summits of the houses and glittering in the sun, are very striking and imposing objects. In this respect no city in the world, except Constantinople, can be compared with it. In the evening we visited the Russian Theatre. Both the infernal regions and the Elysian fields were well represented on the stage.

Tuesday.

It rained all day. Dined with Madame Novaselsoff. She is one of the three daughters of —— Orloff, the youngest brother of the three who left no son—immensely rich—had one son, an only child, who was killed in a duel some nine years ago. Aide-de-camp of Emperor—Ischermoff was his antagonist. Both fell. His mother lives upon his memory. She says she is now building two churches, one on the spot where he expired and the other on her estate—a monument. She has established schools, one on the Lancasterian plan, among her peasants. I told her she ought to live for her peasants and consider them her children. Her example also might produce great effect. She said she had no object to live for, and when it was the will of God, she would go cheerfully; that her affections were fixed on another world. She had a full length likeness of her son in her parlor, and different other portraits of him scattered about; his drawings, etc., etc.

Wednesday morning.

We visited the Foundling Hospital, or the Imperial House of Education, as it is called. We had a letter for Dr. Alfonskoi, the chief medical officer attached to the institution, and he, together with Baron Stackelberg, the superintendent, conducted us through the apartments. This hospital is the glory of Moscow and is the most extensive establishment of the kind in the world. It is perfectly well conducted in all its departments.

The object of the institution is twofold. The first is limited to the preservation of the lives of the foundlings and rearing them as peasants of the crown, and the second extends to their education and their freedom. The number of infants of the first

description amounted to 6,500 the last year. Each of these requires a separate nurse, and from the peculiar state of society in Russia, these are provided without the least difficulty. The peasant women throughout the province of Moscow (and others are excluded) come daily in considerable numbers to offer their services as nurses. Each one receives a foundling and after remaining with it a few weeks in the hospital, she and the child are sent to the village to which she belongs. For the maintenance of this child, until it attains the age of twelve years, she receives five roubles per month, or sixty per annum. Three thousand foundlings had been received during the present year. The boys and girls thus raised are sent upon the lands of the crown and become peasants. The former are not exempted from serving in the army.

It was quite a novel spectacle for me to pass through the long ranges of women, with infants in their arms, or in the cradle. Everything was clean and in good order; though the women were anything but good-looking.

I believe most of the children received are legitimate, of poor parents. *It is called the Imperial House of Education*, not a foundling hospital, and the former name is more applicable to it than the latter.

They borrow at 4 and lend at 5; not 5 and 6, as the Guide says.

Baron Stackelberg told Mr. G. that the institution had 7,000,000 roubles clear after all expenses at the end of each year —*sed quere*.

The second class are very different from the first. They consist of those foundlings for whom 150 roubles are advanced at the time they enter the establishment. But as the institution can accommodate a greater number than are sent to it upon these terms, the deficiency is supplied by selections made sometimes from children of the first class, but most generally from those of poor parents of Moscow. These all continue in the institution until they receive their education. They are free when they depart from it and are not liable to be drafted as soldiers. A sufficiently accurate account of these is to be found in the Guide. There are at present 550 boys and as many girls of this description.

We dined with Dr. Alfonskoi. His wife is a communicative, agreeable woman who expresses her opinion freely upon all subjects. Whilst at table I received the impression from

her conversation that she took me for an Englishman, notwithstanding I had been introduced to her as the American minister. I did not consider this remarkable, from the ignorance which prevails throughout this country concerning the United States. On the evening of this day I had a still more decided example. Mr. G. and myself went to pay a visit to "The Prince Ourousoff, master of the court of his I. M., and senator." Whilst I was conversing with the daughter, the princess asked Mr. G. if the United States still belonged to England. He replied that they were independent and constituted a separate government. She said this must have been since 1812, and when he informed her that their independence had been recognized by England since 1783, she was much astonished. Among other things she wished to know whether they spoke the English language in America.

We visited the Souchareva Bashnia. This is a lofty and extensive building on an elevated position, in the second story of which is the reservoir to supply the city with water. This is brought eighteen versts. The top of the edifice affords a fine view of the city.

All the buildings of this establishment escaped the conflagration of 1812. They contain at present a population of more than 5,000, and have a distinct police.

Thursday morning.

Before breakfast I visited the mineral-water establishment. It is situated near the Moscow, about four versts above the Kremlin. There you find waters of twenty-four different kinds prepared in imitation of those which are most celebrated throughout Europe. I took a glass of Carlsbad, the taste of which reminded me of that of Saratoga. Indeed the whole scene resembled that exhibited there. There were a great number of ladies and gentlemen walking in the promenades, drinking and talking; but the ladies of Saratoga were not there. The water is drawn by cocks from different vessels prepared for containing it, and placed contiguous to each other in a row.

This establishment has been recently made by a joint stock company. The emperor has subscribed a number of shares. In St. Petersburg they are about to get up a similar establishment. There were to be six hundred shares at five hundred roubles each; but three times that amount was subscribed at once. Dr. Myer, whom I met there to-day, is now here as agent from

St. Petersburg to gain information, and observe the operation of the establishment at Moscow.

We ascended the belfry of Ivan Vélikoi (Jean le Grand). It receives its name from the Church of St. John, which it surmounts. From there we had another fine view of the city. There are thirty-one bells in the belfry. All in the Kremlin are collected in it.—Vide the Guide.

From thence we proceeded to the treasury of the Kremlin and examined its contents. It is fully described in the Guide, with the exception of some things which have been added since its publication.

These are chiefly the trophies of the conquest of poor unhappy Poland. They are the two thrones—the sceptre, the globe, and the sword of the emperor of Russia as king of Poland, which have been brought from Warsaw.

The portraits of all the kings of Poland are now hung up in their order in this Russian arsenal where the treasure is kept. We saw there also the flags which had been presented to the Polish army by the Emperor Alexander, and also the original constitution of Poland on the floor at his feet. It was placed there by the express command of his present majesty.

The glorious standard of Poland which waved triumphantly over many a well fought field, but which the most exalted courage and self-devotion could no longer maintain against brutal and barbarian force, is there exhibited. The white eagle has been obliged to cower beneath the double-headed monster of Russia. May it again soar! though to all human appearance it has sunk forever.

The head of John Sobieski is one of the most noble and commanding I have ever beheld. The famous standard which he took from the Turks at Vienna when Poland saved Europe from the sway of the Infidel, is now in the same hall with the portrait of the hero and the king who commanded her army on that celebrated day. We afterwards visited the ancient and the modern palaces. The contrast between the two exhibits the change between ancient and modern times in striking colors. In one of the rooms of the latter, among other ancient portraits, we saw one of the Princess Sophia. She was an extraordinary woman, and must have had a very fine face. I have an interest in this woman, and am willing to disbelieve the crime which Peter the Great attributed to her, of an intention to assassinate him. How must her proud and ambitious spirit have been

chafed by being confined to a monastery after having reigned with so much distinction. Accompanied by Mr. Thal, we rode out of the Barrier de Drogomirov, two or three versts on the road to Smolensko, to the summit of the last of three hills which rise gradually above each other, from whence we had a fine view of the city. It was from this quarter that the French entered. Bonaparte slept the first night at Petrovski, a place near the St. Petersburg road, about three versts from the city.

Friday Morning, June 2–14th.

I went with Mr. Gretsch, the editor of the *Bee* at St. Petersburg, to see the famous monastery of Novo Devitcher where we saw the tomb of the Princess Sophia, who took the veil under the name of Suzanna, and was buried in 1704. For the rest, see the Guide, 183, 184. Mr. G. and myself visited and went through the mosque. In this country, all churches must be open. Unfortunately we arrived a little too late for the service.

John the Third, in 1473, married the Princess Sophia, the daughter of Thomas Paléologus Porphyrogénétus, who was the brother of Constantine Paléologus, who died in 1453, whilst seeing his capital fall under the dominion of the Turks. By his unison with the last descendant of the Paléologus, John the Third considered himself as the heir of their crown, and after his marriage he substituted the eagle with two heads for the cavalier which was then the arms of the grand principality, and it was then that he took the title of Tsar.

Saturday.

This Mr. Gretsch is the editor of the *Northern Bee* of St. Petersburg, the principal Russian journal. He is also on a visit here for the first time. He came up to me the other day at the Treasury and introduced himself, since when he has been uncommonly kind. He appears to be, for I know not what he is, a frank, open-hearted, talkative, well-informed person, but something of a bore. He laughingly styled the sultan this morning "our Governor General of Turkey." I am persuaded this is now the feeling in Russia. They believe themselves to be already the virtual masters of Constantinople.

Mr. G. and myself afterwards went to the Mountain of Sparrows. It is on the southwest of the city opposite or nearly so the monastery of Novo Devitcher. From thence you have the best view of Moscow, and it is truly a beautiful and magnificent spectacle. It was here that they commenced the founda-

tion of the cathedral of St. Sauveur, in consequence of a vow of the Emperor Alexander during the French war; but it has been discontinued, and will be erected in another part of the city. The place was found to be too extensive and too expensive, though the vow was to build the greatest and most magnificent church in Russia.

We next visited the garden of Niéschouchin, from whence also we had another fine view of the city. We there saw a theatre *sub Jove*.

The opinion of Dr. Alfonskoi on the cholera is that it arises in all cases from a defect of heat in the system, and his universal remedy, after he came to understand the disease, was the hot, very hot bath. He is fully convinced it was not contagious. It seized on those whose digestive powers had been enfeebled by drunkenness or high living. I told him of Dr. Stevens' saline treatment, and he said, from the development of heat, [which] the salt produced in the system, it might have been a good remedy. The cholera, Dr. A. thinks, came from the earth, is connected with gravity. The grip is its opposite and is connected with electricity. This last the best evidence that the cholera has finally disappeared. The stomach the root, as of a tree, etc.

Sunday, 16th June.

I went to the English chapel, and heard an excellent, animated, evangelical discourse, from the Rev. Matthew Camidge, the pastor. His text was 2 Peter 3d chapter, from —— to ——. It was on the subject of the long suffering of God with sinners, and the repentance to which this should naturally lead, etc., etc. The judgment-day will come by surprise as many temporal judgments do after long suffering.

There is to be a theatrical entertainment this evening in the open air, at the garden of Nieschouchin, and afterwards a party at Madame Paschkoff's. My old Presbyterian notions will prevent me from attending either. After church I paid some visits to the Skariatines, etc.

The English chapel was consumed in the conflagration of 1812, and has been rebuilt but a few years since. It contains no organ. They sing well. The pastor receives about £200, the half of which comes from England. I was struck with the solemnity of this little congregation in a strange land. May God be with them! It was the most impressive sermon I have heard since I left America.

Monday, 5–17th June.

We visited, in company with Mr. Gretsch, and particularly examined the interior of the cathedrals of the Annunciation, of the Assumption, and of St. Michael the Archangel. They are sufficiently described in the Guide. We also visited the ancient palace of the Patriarchs, and saw everything that was contained therein. The apartments of his holiness were very small and simple, though the state rooms must have been considered magnificent in Russia a century and a half ago. We there saw the apparatus for making the holy oil, which is distributed throughout Russia. It is only prepared once in three years. How wise it was in Peter the Great to abolish the Patriarchate! Few men would have had the courage to make the attempt. From the ignorance of the Russians and their proneness to superstition, he must have continued to be as he formerly was, the rival of the czars themselves.

From thence we went to the Alexander Institution, so called after his majesty. Whilst the cholera raged in Moscow, many of the children of poor noble families were deprived of their parents, and thus became destitute orphans. To relieve their wants and furnish them with an education, this institution was first established by the present emperor. Being pleased with its operation, he has made it permanent. The orphan children of poor nobles from any part of the empire are now received there, and all their expenses defrayed. The emperor purchased for the purposes of this institution the house and grounds of a nobleman, Count Rasoumoffsky, for which he gave 1,200,000 roubles B. A.

The extent of these private establishments of the Russian nobility may be judged of, from the circumstances that this house and the adjacent buildings appertaining to it now, accommodate 250 boys and as many girls, with all the necessary professors and domestics.

Here the former are taught the Russian, French, German and Latin languages; geometry, geography, drawing, dancing, etc., etc., and the latter are instructed in all these branches, except Latin and geometry, and in the other accomplishments which more particularly belong to females. There are three classes of each.

We heard the first class of the young ladies examined in French and geography, and then specimens of their drawing, embroidery and other needle-work were exhibited to us. They

acquitted themselves very creditably. They also played for us on the piano. As a compliment to myself, they were examined on the geography of the United States. What struck me with great force, was that the little girls in the second and third classes recited pieces from the French and German, as well as the Russian, with apparent facility, and so far as I could judge, with a perfect accent.

They certainly have the most wonderful talent for acquiring languages of any people in the world.

We afterwards went through the apartments of the boys and heard them examined. One of the boys was asked who was the greatest man that America had produced, and he promptly answered Washington. The thrill of delight which I experienced at the moment, I shall not undertake to describe. He hesitated in his answer to the second question, who was the next, as probably many Americans would; and was then asked who was the celebrated ambassador of the United States at Paris, to which he replied Franklin. He first said Ptolemy Philadelphus, but corrected himself immediately.

The most imposing spectacle I witnessed here was all the girls collected at dinner. They were all dressed alike, in green frocks and white aprons, which came over their arms. When we entered, they were all ranged at their different places and were standing up. Those who were distinguished, were placed at two small tables in the centre. Previous to taking their seats, they sang a hymn in Russian as a blessing. Their performance was excellent. Here the goodness and piety of the female heart shone out in a striking manner. The little girls exhibited the warmest and most lively devotion, and frequently crossed themselves with all that sincerity and ardor of manner which can never be counterfeited at their age. The dinner was very good. One circumstance is worthy of remark. Mr. Gretsch made a little address in Russian to one of the female classes, which Mr. Guerreiro understood. He informed them that I was the minister of the United States, a great and powerful republic. That the people there were well educated and well informed; but that every person had to labor. That their Government was a good one; but no paternal emperor existed there, who would become the father of orphans and educate them at his own expense. He concluded by impressing upon their minds how grateful they ought to be to the emperor, and how much a monarchical government ought, on this account, to be preferred to a republic.

The emperor is very fond of this institution, of which he is the founder. Indeed, in different forms and in different manners nearly all the children of the Russian nobility of both sexes are educated in imperial institutions, and in some degree at the expense of the government. We visited the garden where there was a considerable number of very little boys and girls too young for any of the classes. It is the emperor's delight, they say, to go among them and play with them, to lie down upon the ground and let them cover him, and to toss them about in all directions. From all I have heard, a great fondness for children is one of the traits of the emperor's character. He is quick and warm in his feelings, and at the moment of irritation would be severe; but his passion soon subsides, and the empress receives great credit for correcting this fault in his temper. I am more and more convinced every day that he could have pursued no other course with safety towards the Poles than that which he did. The bitterness against them is extreme, and there is scarcely a monument of antiquities in the Kremlin which does not relate to battles lost and won between the two nations. Their mutual enmity is truly hereditary. The emperor advances two hundred thousand roubles per annum to this institution, and has lately given it a million of roubles, which is to accumulate for the purpose of forming a capital for its support. The foundation of a new and extensive building has already been laid for the better accommodation of the pupils.

The chamberlain, Tchenchine, is the principal director, and Mr. Davydoff the chief professor, with both of whom I was much pleased, as well as with Madame Tchenchine, the wife of the former.

From thence, accompanied by Messrs. Tchenchine and Davydoff, we visited the Armenian institution, founded in 1806 by the Messieurs Lazareff, wealthy Armenian noblemen, for the benefit chiefly of native Armenians, wheresoever they may be scattered. The memoir presented to me by Mr. D. will sufficiently explain the object of it. There you saw in the form and in the face of the pupils the Asiatic traits. One of them, a native of Calcutta, spoke English to me. There are several private institutions for the education of youth at Moscow, founded by private munificence, and whether ostentation may have been the moving cause or not, still they are very valuable to the community. We partook here of an elegant déjeuner-à-fourchette. There are now forty-five scholars gratis and twenty-

five who pay fifty roubles per month, in the institution, so says Mr. Davydoff.

We dined to-day with the governor-general, Prince Galitzine, and a select party. He is a dignified gentleman of the old school, with great simplicity of manners, and is revered by the people high and low of the city and province of Moscow. He speaks English tolerably well, and we had much conversation concerning the United States. He commanded the cavalry at the battle of Borodino, and represented it, as it has been always represented, as a most murderous battle on both sides.

We spent the evening at Prince Ouroussoff's. I had almost forgot to mention that in our visits to the cathedrals and the patriarchal palace we were accompanied by Mr. Polevoy, the editor of the Moscow *Telegraph*, at Moscow, who is engaged in writing a history of Russia, and by another savant, Professor John Snéquireff.

The former gave me several exemplaries of Russian antiquities as a souvenir.

Tuesday Morning.

Mr. Gretsch, Mr. Guerreiro and myself set out for the Troitza monastery, a place famous in Russian history. It is sixty-two versts north of Moscow. We left by the barrier of Troitza. We found the road covered with numerous parties of pilgrims on foot, going to pay their devotions at the shrine of St. Sierge, the founder. The women were, I think, nearly ten to one for the men. In ancient times the sovereigns of Russia used to go on foot from Moscow to worship at this shrine; the *pious* Catharine was, I believe, the last who performed this pilgrimage in this manner.

The villages and churches along the road are nearly all celebrated in Russian history. At about seven versts from the principal convent there is a monastery for nuns dependent upon it. We found the church at this monastery crowded with pilgrims, crossing themselves; many were on their knees before the pictures, and the most devout touched the floor with their foreheads. There is nothing in the Greek liturgy which sanctions the worship of these pictures. Indeed, images are excluded. It was, however, impossible to resist the belief that these poor creatures considered them something more than mere pictures.

When we arrived at Troitza we found that the governor-general had sent an officer to show me all the antiquities and curiosities of the place; and had not Mr. Guerreiro told them in my

absence that he knew it would be disagreeable to me, I should have been received by a military guard. I thus avoided what to me would have been unpleasant.

We were first presented to the Reverend Father Antoine, the archimandrite or abbot of the monastery. In my life I have never beheld a more heavenly expression of countenance. It spoke that he was at peace with heaven and with his fellow-men, and possessed a heart overflowing with Christian benevolence and charity. He spoke no French nor English, and my conversation with him was through Mr. Gretsch as interpreter. He is very intelligent and perfectly modest and unassuming in his manners. In his appearance he is not more than thirty-five. His long beard was of a most beautiful chestnut color, and made his appearance venerable notwithstanding his comparative youth. I shall never forget the impression which this man made upon me.

He showed us all the antiquities himself; and first we made a circuit on the ancient wall. It is a mile round and at least twenty-two feet thick, and its great glory is that the Poles have never been able to pass it. This he communicated to us with evident satisfaction. It was in ancient times the strongest fortification in Russia, and was perfectly impregnable before the use of artillery. An imperial palace formerly existed within it, not a trace of which now remains.

St. Sierge was a pious and patriotic hermit who, in the reign of Dimitri Danshoy, retired to this spot, which was then a wilderness. Some well authenticated facts exist which may well inspire a superstitious people with great veneration for this spot. Among others of a recent date, when the plague raged in Moscow during the days of the Empress Catharine, notwithstanding the gates of the monastery were always open to the crowds of pilgrims who then frequented the shrine, no case of plague occurred within the walls. The same may be observed in regard to the recent cholera.

After the circuit of the walls, we passed through the different churches. That where the reliques of St. Sierge are deposited was much crowded. His shrine is very rich. The church was crowded with pilgrims.

The interior of these churches resembles the others we had seen. The iconostase is the covering ascending from the floor to the summit, which conceals from public view the place where the sacrament is consecrated. Upon it are uniformly painted, in

several rows, holy pictures of the Virgin and of the saints. In the ancient churches these are sufficiently rude and barbarous, but richly ornamented.

In passing from one church to another we saw a square brick wall covered with boards, but without any inscription, which contains the remains of Boris Goudounoff and his family. The bodies of the father and the son were taken by the fury of the people from the cathedral of St. Michael, where they were deposited with those of the other czars, and were afterwards brought to Troitza. They were formerly within the walls of a church; but, it needing repairs, in the time of the madman Paul, he ordered the walls which extended over these remains to be taken down, and the limits of this church to be restricted so as to leave them without a covering. Whilst the good archimandrite was relating this circumstance, he was evidently much affected by the barbarity of the action. This was done because Paul believed Goudounoff to be a usurper.

He has been charged with the crime of having caused the murder of the true Dimitri, the last branch of the family of Rurick. But this is a most obscure period of Russian history, and their great historian, Karamsin, leaves the question in doubt. In all other respects he was an excellent sovereign, and Peter the Great always spoke of him in terms of the highest respect.

We afterwards visited the sacristy and there saw a great many splendid sacred robes and vessels. All the sovereigns in succession of the house of Romanoff have presented their gifts, with the exception of Peter the Great, and there are several prior to that period. The specimens of embroidery wrought by the Empresses Elizabeth, Anne and Catharine the Second are very rich and magnificent. Peter the Great deprived this monastery of all its disposable wealth for which he gave them receipts, and Catharine took their lands and their peasants from them. But Peter built a church there, at least so the archimandrite said, and pointed it out to us.

The greatest curiosity in the sacristy is the miraculous crystal, or white stone, in the body of which is clearly defined and represented in black a monk in his black robes kneeling before a crucifix. It requires no effort of the imagination to present this spectacle to the eye. It is clearly and distinctly defined. I examined this stone with great care, and certainly but with little faith, and yet I am under the impression that the likeness of the monk and the crucifix are contained in the very

body of the crystal itself, and are not artificial. . . . . Nature, amid the infinite variety of her productions, has given birth to this curious piece of workmanship. The Father Antoine, in a solemn and impressive manner, presented each of us with a consecrated picture of St. Sierge.

The Father Antoine then accompanied us to that portion of the buildings destined for the students of divinity, of which there are 100 at Troitza, and the same number of monks. There we were presented to the archimandrites; Polycarpe, rector of the ecclesiastical academy, a fat and jolly-looking monk, who laced his tea strong with cherry brandy and took his wine kindly; to Peter, ancient archimandrite of the Russian mission at Peking, who has a long white beard and venerable appearance, and read Chinese aloud for our amusement; to Neophyte, formerly substitute of Peter at Peking; and to the monk Isidore, librarian of the ecclesiastical academy. Their wine and their tea were both excellent, and we spent an hour or two very pleasantly with them. There is a room in these apartments, the ceiling of which contains paintings of the different exploits of Peter the Great; a tribute of his daughter, the Empress Elizabeth. Upon taking leave, Polycarpe presented me several treatises in Russ as a keepsake. Upon taking leave of Antoine, I submitted to be kissed by him according to the Russian fashion, first on the right cheek, then on the left, and then on the mouth. This was my first regular experiment of the kind.

Wednesday.

We dined at Mr. Cavenaugh's with a party of English. Among others I met Mr. Camidge there. His appearance, manners and conversation in private society did not answer the expectations I had formed of him from his preaching.

Thursday.

On the 20th of June we left Moscow at eight in the evening, and arrived at St. Petersburg on Monday, the 24th, at 2 P. M., having slept two nights on the road. At Vouischnije Volotschok we saw the sluice connecting the Tivortza with the Atsta. It can only be used by vessels going towards St. Petersburg.

TO EDWARD LIVINGSTON,

SECRETARY OF STATE.[1]

(No. 19.) AMERICAN LEGATION
ST. PETERSBURG 3 July N. S. 1833.

TO THE HONORABLE EDWARD LIVINGSTON,
Secretary of State.

SIR,

On the 28th Ultimo, I had an interview with Count Nesselrode, on the subject of the application which I made on the 5/17 May, in behalf of Messrs. Shaw & Co. of Boston. The question has not been yet decided.

After the conversation upon this subject, the Count informed me that Baron Krudener, in his last Despatch, had acknowledged the receipt of the Emperor's ratification of the Treaty. And on the first Instant, I received a note from him communicating the intelligence that the ratifications had been exchanged at Washington on the 11th of May.

At this interview, I had hoped he would say something concerning the proposed Treaty on neutral Rights, and gave the conversation such a turn as would naturally lead to the subject.

I enquired when the Emperor would leave St. Petersburg. He answered that His Majesty would not set out upon his journey into the interior, until after the commencement of August. I then replied, that before his departure I should solicit my audience of leave, as I intended to return to the United States during the approaching Autumn. He expressed his regret at my determination and their satisfaction with my conduct as a Minister; but made no allusion whatever either to the Treaty, or to my note of the 18/30 of May. I felt that it would not be becoming for me again to press this subject upon his attention: and thus we parted. Perhaps it might have been better, under all the circumstances, not to have attempted a renewal of the negotiation at the present moment.

This Government has, for some time, been in possession of secret information which has given them much concern. The impression is, that it was first communicated to the Emperor by Louis Philip. A number of Poles at Paris, driven to desperation by their sufferings, have solemnly sworn before God, and pledged

[1] MSS. Department of State. Imperfectly printed in Curtis's Buchanan, I 207.

themselves to each other, to assassinate the Emperor, at any personal peril.

The first intimation which the public had of the existence of this conspiracy was the publication on the 8/20 June, in the St. Petersburg Journal, of an address presented to the Emperor at Helsingfors, during his late visit to Finland; the subject was again referred to in the succeeding number of the 15/27 of the same month. I herewith transmit you both these numbers.

From the desperation of the Poles and their determined character, this information has excited considerable alarm in St. Petersburg. The people here, whilst they admire and respect the Emperor as the author of their security and prosperity, look with fearful apprehension to the future, in the event of his assassination. The heir apparent is yet a minor; and although he possesses a most amiable disposition, it is believed, he is deficient both in talent and strength of character. The Grand Duke Michel who would become regent is as universally disliked as the Emperor is esteemed. Indeed, in such an event, many of the foreigners in St. Petersburg, knowing the deadly hostility felt against them by the lower orders of Russians, would entertain serious apprehensions for their lives and their property. Such is the miserable condition of despotism:—and such is the feeling here, at the very moment, when this Government, more by its superior policy than its power, has acquired a commanding influence throughout Europe.

Still greater precautions now exist than did formerly in regard to the admission of strangers into the Country. The Emperor no longer appears in the streets like a private citizen. It is said that he is always surrounded by guards. But from what I have heard, he rather submits to these regulations of his Ministers than approves of them himself. He is a bold and fearless man and manifests no apprehension whatever. If the Poles have determined to play the part of Scaevola, he at least will not enact that of Porsenna. Three of the conspirators have been seized in Russia.—After all I cannot feel that there is much danger.—I send you the Journal of yesterday containing our latest news from Constantinople.

This Despatch will be carried to London by Mr. Gibson, our Consul. He has been ill for some time and his disease is, I fear, now approaching its crisis. He is very feeble, has a bad cough and throws up much blood. His Physician informed him that his only hope was to leave St. Petersburg & that immedi-

ately. Mr. Clay will perform his duties during his absence; and we are both happy to render all the services in our power to so worthy a man and so good an officer.

After having written the foregoing, I had the pleasure of receiving your Despatch No. 11 dated on the 30th April. It has been long on the passage. By the Hamburg Reporter received on the 29th Ultimo, we had New York dates, via London, up till the first of that Month.

Yours very respectfully

JAMES BUCHANAN.

TO G. LEIPER.[1]

ST. PETERSBURG 3 July 1833.

MY GOOD FRIEND/

It was with no ordinary pleasure that I received a letter by Mr. Clay with your well known superscription. You make a strong mark & your writing would be known among a thousand.—I now have the joyful anticipation of being ere long once more among you. A land reposing under the calm of despotism is not the Country for me. An American of proper feelings who visits any portion of Europe must thank his God that his lot has been cast in the United States. For my own part I feel that I am a much greater Republican than ever.

I hope with the blessing of Heaven to be able to leave St. Petersburg in perfect consistency with the interests of my country some time during the next month. I shall then spend a few weeks in seeing other parts of Europe & embark for home the last of October or beginning of November.

I have recently returned from a short excursion to Moscou: the city which rolled back the tide of victory upon Napoleon. Petersburg is a cosmopolite city; but at Moscou you see Russia. It is a most picturesque & beautiful city. Its numer-

[1] Buchanan Papers, Historical Society of Pennsylvania. Printed with some inaccuracies in Curtis's Buchanan, I. 205. George Gray Leiper, to whom this letter was addressed, was born in Delaware County, Pennsylvania, February 3, 1780, and died there, November 17, 1868, the same year as Buchanan. He was a representative in Congress from 1829 to 1831, and for many years served as a lay judge of the Delaware County Circuit Court. As appears by their correspondence, he was one of Buchanan's most cherished friends.

ous churches surmounted by cupolas of every form & of every color give it a romantic & an Asiatic appearance. Many of these are gilt, & when the rays of the sun are reflected from them, the eye is dazzled with the richness & splendor of the spectacle. From Moscou I made a pilgrimage to the shrine of St. Sierge—a distance of 40 miles. Going & returning I suppose we saw ten thousand fellow pilgrims upon the way. They were chiefly of the fair sex & nearly all on foot. This shrine is at the Monastery of the Trinity,—a place famous in Russian history having been at the same time a convent, a palace & a fortification. Here the family of the czars have often taken refuge. In passing round on the top of the wall with the abbot, (which is more than a mile in circumference) he told me in a tone of triumph & national antipathy, that these walls had never been taken by the Poles. On taking leave he presented me with a consecrated picture of St. Sierge, & from him I submitted to the operation of being kissed, first on the right cheek, then on the left—& finally plump on the mouth. This is the general custom of the Country; but it was my first experiment of the kind. The pious Catharine although she seized the peasants & the broad acres of this monastery, made a pilgrimage on foot from Moscou to the shrine of St. Sierge. But enough of this bagatelle.

On Saturday last the 29 ultimo we had news from New York via London up till the 1st; a wonderfully short passage. We then heard of the death of poor Randolph & of the appointment of Mr. Duane as Secretary of the Treasury. I have no doubt the latter will make a good officer & he shews great courage in undertaking the Treasury at the present moment. My best wishes attend him.

I think it more than probable that my political life is drawing to a close & I confess I look upon the prospect without regret. Office is not necessary for my happiness. I can enjoy myself, with the blessing of God, under my own vine & my own fig tree. Whoever embarks on the stormy ocean of politicks must calculate to make a shipwreck of contentment & tranquillity. I have served the old hero faithfully & zealously & he has done more for me than I could have expected.—

But I hope ere long to talk over my travels & my ups & my downs along with Edwards & yourself & a few other friends in the good old county of Delaware. Bye the bye, I have a crow

to pick with Edwards. I wrote to him & he has never answered my letter.

I am obliged to write at full gallop. *Safe* opportunities are so rare & when they occur so much of my time is taken up in writing Despatches that I have but little left for my private friends.

Remember me kindly to Edwards & his charming wife, to Dick, the Doctor—your brothers—Kane—Lescure, Judge Engle & my other friends. Please to present my most respectful compliments to Mrs. Leiper & believe me—in whatever land my lot may be cast to be always your friend

JAMES BUCHANAN.

GEORGE G. LEIPER ESQ.

DIARY, JULY 13, 1833.[1]

THE FETE AT PETERHOFF, SATURDAY, JULY 1–13, 1833.

The English palace was provided for the reception of the Diplomatic Corps, where we lived with Count Daschkaw, the grand master of ceremonies, Count Matuscervie, and some masters of the court. Everything was provided for us in handsome style, for which, according to custom, I paid the court servants two hundred roubles at my departure.

In the morning we went to visit the gardens upon singular vehicles on four wheels and drawn by two splendid horses. I can describe it no better than by imagining a double sofa with a single back, on which ten of us could sit back to back comfortably, five on each side. The foot-board was within about a foot of the ground.

The water-works are the chief object of attraction. The water is conveyed in a canal for the distance of about thirty versts to the palace of Peterhoff, which is situate at the summit and on the brink of the second bank of the Gulf of Finland. From it there is a steep descent of about thirty feet to the extensive plain on the southern shore of the Gulf, which is covered by the immense garden. It is this descent which has enabled them to present so many varieties of water-works. In the gardens

[1] Curtis's Buchanan, I. 206.

above, on a level with the palace (the English garden), the water is tastefully distributed into several lakes, etc.

The water falls in several broad sheets over different steps immediately in front of the palace. One range of these is gilt, and in a clear day must present a splendid spectacle. They place candles under the shutes of the water and thus have an illumination under the water, which did not, however, produce the effect I expected.

There are many long walks in the gardens, I should say more than a verst in length, at the intersection of which are little lakes, and in the centre of them jet d'eaus.

On the sides of these walks, and all around the little lakes, were frameworks to a considerable elevation, destined for the candles.

We rode all through these different walks. In front of one of the lakes stands the little palace of Marly, built by Peter the Great. Everything is preserved there just as he left it; and it was curious to observe the progress of luxury in comparing his clothing and accommodations with those of the imperial family in the present day. There is a carp which has been in the lake for a century, with a collar round its neck. It, with others, comes to the edge of the water at the sound of a bell, every morning, to receive its breakfast.

We went over to the ball about eight in the evening, where the emperor and empress and the rest of us polonaised, and all things were conducted as on the 1st January, only the crowd was not so great. After supper, about half-past eleven, the emperor, empress, Prince Albert of Prussia, and other members of the I. F., mounted one of these vehicles. They were followed in others by the members of the court of D. C., and thus we slowly promenaded through all these walks, the sides of which were covered by immense crowds of spectators. The effect of the illumination was brilliant. The Grand Duke Michel was on horseback, and great precautions were evidently taken, on account of the Polish conspiracy.

About half-past one we ended. The distance to Peterhoff 26 versts. Mr. Lander and Captain Ranlett, Americans, were there in the ball room, in dominos, etc., etc.

TO LOUIS McLANE,

SECRETARY OF STATE.[1]

(No. 20.) Legation of the United States
St. Petersburg 20 July 1833. N. S.

To the Honorable Louis McLane
Secretary of State.

Sir,

I received, on yesterday afternoon, despatch No. 12, announcing your appointment as Secretary of State; upon which event please to accept my cordial congratulations.

I herewith transmit the copy of a letter and accompanying documents which I have received from Mr. Schielin our Consul at Taganrog.

Nothing of the least importance has occurred since the date of my last despatch. The great fête of Peterhoff, at which many persons apprehended an attempt might be made on the life of the Emperor, has passed away quietly. Still, all strangers, before they are permitted to enter the Country, undergo the strictest examination.

Present circumstances recall to memory the conspiracy which existed against the life of Alexander, & the tragical end of Paul, and Peter 3d, the father and grandfather of the present Emperor. Nicholas, however, possesses much more energy of character than the former; and to compare him with the two latter would be to do him great injustice.

Yours very respectfully

James Buchanan.

TO THE REV. EDWARD BUCHANAN.[2]

St. Petersburg 20 July 1833.

My dear Brother/

I received your kind letters of the 7 & 17 May, on yesterday afternoon; the latter communicating the melancholy intelligence of mother's death. The news was a severe & unexpected blow. I had hoped, by the blessing of God, to see her once

[1] MSS. Department of State.

[2] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 209.

more on this side of eternity. Indeed this desire was one of the chief reasons which made me so reluctant to spend another winter in Russia. But it has been the will of the Almighty to take her to himself, & we must bow in humble reverence. I received, at the same time, a letter from Mr. Henry, which gave me the consolatory assurance that she had died the death of a christian, & that her latter end was peace.

It is my present intention to leave St. Petersburg on the 7 August: and I feel almost confident, with the blessing of Heaven, that I shall be able, with propriety, to bring all the business of my mission to a close before that day. My present purpose is to go by the Steam Boat to Lubeck, & thence by Hamburg, Amsterdam, the Hague, & Brussels to Paris where I shall probably spend a fortnight. I shall then proceed to London, Edinburg, Glasgow, Belfast & Dublin, from which City I intend to cross over to Liverpool & sail for New York by the Packet of the 24 October. It is my intention, if possible, to see Romilton & Derry. I hope to reach the United States in the beginning of December.

I have recently returned from a very agreeable excursion to Moscou; but I must defer a description of this City, the ancient Capital of the Czars, until we meet again. Whilst there I visited the celebrated monastery of Troitza at the distance of 40 miles. In the estimation of the Russians, it is a very holy place. It was anciently a strong fortress which contained a palace as well as a convent: & is much connected with the history of Russia. The sovereigns formerly made pilgrimages on foot from Moscou to the shrine of St. Sierge, at this monastery. The Empress Catherine the second was the last who performed this act of devotion. Going & returning there, I am confident we met at the least 10,000 pilgrims on foot. They appeared to be of a low order of people & the great majority were females.—I have but little time before the departure of the boat & must close. Remember me affectionately to my sister, I don't know her christian name, to the Doctor & Maria. I am glad to hear that the latter are so comfortably situated; & hope you may all live together in Christian peace & in prosperity. Remember me kindly to Judge & Mrs. Shippen, Mr. & Mrs. Barlow & believe me to be ever your affectionate brother.

JAMES BUCHANAN.

P. S. I wrote to our dear mother on the 3d Instant.

REV: EDWARD Y. BUCHANAN.

TO LOUIS McLANE,

SECRETARY OF STATE.[1]

(No. 21.) LEGATION OF THE UNITED STATES
ST. PETERSBURG 31 July 1833. N. S.

TO THE HONORABLE LOUIS McLANE
Secretary of State.

SIR,

On Friday last, the 28th Instant, I had an interview with Count Nesselrode, for the purpose of making the necessary arrangements previous to my departure from this Country.

After the usual salutations, he introduced the subject of the Commercial Treaty which is one of his favorite topicks. The opposition made to it in the Imperial Council, and the difficulties which he there encountered and overcame, seem to have inspired him with a feeling of paternity towards this Treaty.

After some general conversation, relating chiefly to its favorable reception in the United States; I changed the subject and remarked, that at our last interview I had entirely forgotten to mention that his explanation in regard to Baron Sacken's note was entirely satisfactory to the President. It might be proper to observe, however, that Mr. Livingston differed materially from the Baron in relation to some of the facts attending this unpleasant transaction, & it had, at first, been my intention to bring these points of difference specially under the notice of His Excellency; but after reflection, I had determined that it was best, upon the whole, not to revive the subject. He immediately replied, it was wholly unnecessary: he wished the whole subject to be buried in oblivion and there remain as if it had never existed. He expressed his pleasure, in the strongest terms, that the President was satisfied with the explanation: and then laughingly observed that Baron Sacken and Mr. Livingston were now both "hors du combat"; the one was no longer Chargé, nor the other Secretary of State.

I felt the less inclined to enter into any detail upon this subject, as Mr. Livingston admits that Baron Sacken did shew him the offensive note at New York, and *that he did not make any objections to its style;* though he is convinced this took place

[1] MSS. Department of State. An extract from this despatch is printed in Curtis's Buchanan, I. 210; also, in H. Ex. Doc., III, 33 Cong. 1 Sess. 68-69.

after the note had been sent to Mr. Brent, and not before, as the Baron had informed Count Nesselrode.

When I returned home, I discovered that the Count, before our interview, must have had in his possession a copy of Mr. Livingston's Despatch, No. 11, giving his own explanation of the whole transaction. During my absence, the Post Office had sent me the Duplicate of that Despatch which, like all the communications I have ever received through the same channel, had been evidently opened. How it got there I know not, because it had been forwarded to this city by the ship Birmingham from New York *via Charleston*.

After this subject was disposed of, I told the Count, that as all our official intercourse had been of the most frank and friendly character, I felt it to be my duty to explain to him the reasons which would induce me to leave Russia sooner than I had, at first, intended. A short time before the departure of Mr. Clay with the Treaty, last winter, I had received information of my brother's death, and of the declining health of my Mother and eldest Sister. These circumstances had naturally produced a desire to return home, and had, besides, imposed upon me new and urgent duties towards my family. In a private letter which I addressed to the President by Mr. Clay, I suggested that these considerations might induce me to ask for permission to leave St. Petersburg sooner than I had intended; and upon his return in May last, I had received my letter of recall with the discretionary power of presenting it when I might think proper. The recent melancholy intelligence of my Mother's death had increased my anxiety, & made the reasons for my departure still more urgent.

He expressed his sorrow that I had been so unfortunate as to have lost my Mother and Brother since my arrival in St. Petersburg, and his regret that these circumstances should have rendered my departure necessary.

I told him I had not, in the beginning, intended to remain longer than two years, I was no diplomat and had never felt any desire to pursue this career. That I should now return to private life, but in whatever circumstances I might hereafter be placed, it would always afford me pleasure to exert any humble influence I might possess, in cementing the bonds of friendship which now so happily united the two Countries.

He complimented me by saying, I had shown myself to be both an able and a successful Diplomat, and he could assure me

I had contributed much, since my arrival in this Country, to promote kindly feelings between the two Governments. He hoped I would carry with me agreeable souvenirs of my residence in St. Petersburg; and that my influence at home might be used in perpetuating the good understanding which now so happily existed.

I had taken with me a copy of my letter of recall, and of the concluding paragraph of Despatch No. 9: and upon presenting them I read the latter to the Count, containing an assurance of the high consideration with which the personal character of the Emperor had inspired the President, and of the wishes he formed for his happiness and the prosperity of his Empire. To this, I added, that such an assurance, proceeding from the source it did, was in itself the strongest evidence of its own sincerity. He again adverted to the happy state of feeling which, he was pleased to say, I had been so instrumental in producing, and expressed his pleasure to find that the character of the Emperor was more justly appreciated in the new world than in many parts of the old. I told him we had no prejudices upon this subject: and that whatever impressions the re-publication of articles in America, from the French and English Journals, might, at the first, make upon the public mind, these, in time, were always certain to be removed, unless they were founded on truth.

Believing this to be a favorable moment once more to allude to the Treaty concerning Maritime Rights; I observed, that whatever might have been my desire to return home, I should not have thought of indulging it, at the expense of my public duties; and even if at this time I could cherish the hope, which, from all that had transpired, I confessed, was almost desperate, of accomplishing the remaining object of my Mission, I should cheerfully postpone my departure until the next Spring, or even longer. Here the Count interposed, and observed that upon this subject he was sorry to say he could give no encouragement: he could not offer me any hope. I then proceeded with the inquiry which I was making when he interrupted me, whether he thought it would be convenient for the Emperor to grant me an audience of leave in time to enable me to take passage in the Steam Boat of the 26 July/7. Aug.; to which he replied that he had no doubt my wishes, in this respect, would be gratified by his Majesty.

Before my departure, we had some conversation as to the time when another Minister might be sent to Russia. I told him, I was without information upon this subject, but it was probable

there would be no appointment until the next Spring. In the mean time Mr. Clay would remain as Chargé d'Affaires. Whenever a new selection should be made I had no doubt General Jackson would send them a Minister, who, in discharging his duties faithfully to his own Country, would study to render himself agreeable to the authorities here. Any general suggestions upon the subject of this appointment which my experience might enable me to offer to the President should be cheerfully communicated. Here he again paid me a compliment [which I need not repeat] and added that the choice of a Minister was a subject of great importance to the good understanding between the two Countries, and that they should be indebted to me, if I would give such information as my experience had taught me, in relation to the kind of a man best qualified to promote this desirable object. This, of course, I promised to do.[1]

And here permit me to remark, that we have no foreign Mission which requires so much prudence and caution on the part of the Minister as that at St. Petersburg. This Government is extremely jealous and suspicious, and in general society,

[1] J. Randolph Clay, who was presented at this interview as chargé d'affaires, and who heard the conversation between Count Nesselrode and Mr. Buchanan, gives, in his despatch No. 1, Aug. 16, 1833, N. S., the following narrative of what was said:

"He [Nesselrode] said, he trusted Mr. Buchanan was fully convinced of the sincerity of the friendship which Russia entertained for the United States, and of her desire to continue the present happy terms of intercourse between the two Nations. That the best proof, which could be given, of the good faith of these professions was, that of all the Ministers, accredited to the Emperor by the United States for a specific object, Mr. Buchanan was the only one who had succeeded in obtaining a Treaty—and such an one as, he was happy to say, proved equally pleasing to either Country. He hoped, therefore, that he would use his influence in America to render this position of affairs permanent. The Count mentioned also that Baron Krudener had seen the President in New York. Mr. Buchanan then took leave of him."

Mr. Clay added an expression of his own opinion, as follows:

"I feel pleasure in saying that no Minister of the United States has ever left a reputation equal to Mr. Buchanan's. The Nobility regret his retirement, and his successor, whoever he may be will arrive under circumstances, disadvantageous, in so far as regards the parallel which may be drawn between them by those nearest the person of the Emperor. This disposition of the most influential dignitaries of the Empire is no inconsiderable compliment to the character of the late Envoy, when it is remembered that his predecessors have been Mr. Adams and Mr. Pinkney." (MSS. Dept. of State.)

no man can tell who are spies of the secret police. Every Minister, and especially an American Minister, on his first arrival, is narrowly watched; and if he has not sufficient self command to restrain his tongue, he might do more harm in three Months, than a prudent man could repair in as many years. When I say this, I do not mean to intimate that he should ever utter a sentiment not truly American; but merely that he ought to know when to be silent, as well as when to speak. On the contrary, he should take advantage of every safe opportunity which may present of making an impression in favor of his Country. These will be frequent, if he can acquire the confidence of the Nobility about the Court. Indeed many of them are anxious to obtain information concerning the United States, and our political institutions, provided they can do it with safety to themselves. Generally speaking, they can only receive the latter from the Minister; as the press is under the most severe censorship. A talent for general political conversation, accompanied with a desire to show it off to advantage, would be the most dangerous qualification which an American Minister could possess in St. Petersburg. These considerations are matters of importance, in a Country, where there is no public opinion: and where every thing depends upon conciliating the favor of the Sovereign and of those persons, by whom he is immediately surrounded.

In concluding these remarks which, I trust, may not be deemed intrusive, I would observe that an American Minister, every where, ought to be a true American, in all his feelings and in all his conduct. He ought to carry with him the republican dignity and simplicity of his Country wherever he goes: and I am persuaded that even here, an attempt on his part, to ape the manners and style of the Nobility would be considered out of character, would impair his influence, and tend to render him ridiculous. But it may also be observed, that when there is no great object of a specific character to be accomplished, a Minister might almost as well not be sent to St. Petersburg, unless he possesses both a taste and a talent for general society: and in order to enable him to succeed in it, a knowledge of the French language is indispensable.

Thus I have redeemed my promise to Count Nesselrode in advance, at the risk of being considered impertinent. It is probable, he would not be much pleased with my delineation "of the kind of man" best qualified to promote the interests of our Country at this Court.

Our commerce with this Country is of much greater importance than what is indicated by the Treasury Reports. A true statement of it would be well calculated to confound those politicians who estimate the value of our trade with foreign Countries by the balances which they exhibit. To present an example; we enjoy in practice almost a monopoly of the trade in sugar, consumed throughout this Empire. It is chiefly brought from the Havanna in American vessels; and thus all our productions which are given in Exchange for it there, find a market, in consequence of this trade with Russia. During the last year there were imported into this Country, by our vessels, 37.370.-818. lbs. of this single article.

The principle Imports into Russia are Sugar, dye-stuffs and cotton yarn. This latter is chiefly brought from Liverpool in English vessels. It is subject to a heavy duty; and this Government are encouraging, with great energy, the domestic establishment of Factories for cotton spinning. The consequence is, that the importation of raw Cotton directly from the United States is gradually increasing, to the great benefit of our Navigation. "The American system" prevails here in all its vigor, and whenever they find they can supply the wants of the Country, they will not hesitate to prohibit the importation of cotton yarn to encourage the cotton spinner, as they have already done that of refined sugar, for the benefit of the sugar Refineries.

I have been much gratified to observe, that our supercargoes and Masters of vessels are treated with great respect and attention by the Russian merchants: some of whom have assured me, that they were far superior, in their general deportment and in their mercantile knowledge, to those of the same class belonging to any other Nation.

A decision has been made favorable to the application of Messrs. Shaw & Co. of Boston; though it has not yet been sent to me. When received I shall have the honor of transmitting it to you.

Yours very respectfully

JAMES BUCHANAN.

TO LOUIS McLANE,

SECRETARY OF STATE.[1]

(No. 22.) LEGATION OF THE UNITED STATES.
ST. PETERSBURG 7 August 1833. N. S.

TO THE HONORABLE LOUIS McLANE
Secretary of State

SIR

On Monday last the 5th Instant, I had my audience of leave of the Emperor, at the palace of Peterhoff, twenty six versts distant from this city. The conduct and conversation of His Majesty throughout the interview were highly gratifying to myself; because they convinced me that I had conciliated his favorable opinion. To obtain this ought to be, next to the honest and independent discharge of duty, the first object of a Minister to Russia. Without it, he can never effectually serve his Country.

Towards the conclusion of this interview you will perceive that the Emperor appeared to lay aside his official dignity, and conversed frankly and with great feeling, upon subjects which I could never have imagined he would introduce.

When I first entered, he said, "what is the reason you are going to leave us. I am very sorry for it. You have given us great satisfaction whilst you have been amongst us." After explaining to him the reasons for my departure, he expressed his sympathy for me on account of the recent loss of my Mother, and made some enquiries in relation to my family, which I need not repeat. I then observed that, at the first, I had not intended to remain longer than two years. I was no diplomat, having never been engaged in that service before; and it was probable I should never again represent my Country abroad. He said, he liked me the better for it. He was no diplomat himself;—his policy was always frank and open, and those who believed otherwise had greatly mistaken his character.

I then presented him my letter of recall, and told him I had been instructed to assure him, on this occasion, of the continued desire felt by the President to foster the good understanding which now so happily subsisted between the two Nations;

[1] MSS. Department of State. Faultily printed in Curtis's Buchanan, I. 212–216.

and to express the high consideration with which his Majesty's personal character had inspired the President, and the wishes which he cherished for his happiness, and the prosperity of his Empire.

He said it was very gratifying to his feelings to receive such an assurance from General Jackson. He had shewn himself to be a man both of integrity and firmness, & he valued his good opinion very highly. He felt a great respect for the people of the United States. They were a true and loyal people; and he should always endeavor to promote the most friendly relations with our Country.

I then added, to that of General Jackson, my own humble testimonial of regard for his personal character, and the gratitude which I felt for his uniform kindness towards myself, upon all occasions when I had the honor of meeting him. He replied that he felt much indebted to me for my good opinion, and trusted I should never have occasion to change it. He hoped I would remember him with kindness when I returned to my own Country. He entertained a high personal regard for myself: and it was a source of peculiar pleasure to him, that it had fallen to my lot to conclude the Commercial Treaty between the two Countries. He was glad this Treaty had given satisfaction in the United States, and he believed it would serve to strengthen the attachment between two nations who ought always to be friends.

I observed it was one of the most agreeable occurrences of my life, to have been instrumental in concluding this Treaty. I had no doubt it would be mutually beneficial to both Countries. That wherever I was, and whatever might be my lot, I should never cease to cherish the most ardent wishes for his happiness, and to use my humble influence in cementing the friendship between the two Nations. This had been my constant object throughout the period of my Mission. He said I had been eminently successful; and again assured me, that my conduct had given him great satisfaction.

He then alluded, with considerable feeling, to the late debate in the House of Commons concerning Polish affairs. He observed that he was the representative of a great and powerful Nation. This station imposed upon him many and arduous duties. He had acted in his public character and upon views of public policy. But instead of considering the subject in this light, they seemed to have been instigated by a desire to abuse him personally. He

could appeal to God and his own conscience for the purity and correctness of his conduct; and whilst that was the case, he should have peace within his own bosom and would not regard the opinion of the world. This was a delicate subject. I replied, that I had read the debate with considerable surprise. The distance at which my rank placed me from his Majesty had enabled me to know but comparatively little of his personal character from my own observation; but judging from that knowledge, as well as from the information I had been able to collect, since my arrival in St. Petersburg, I entertained not a doubt, he had been treated with great injustice. Indeed, it was impossible for any person who knew him to believe that the representations made in that debate could be true.

And here permit me to declare that this is my honest conviction. I yield to no man in abhorrence for the different partitions of Poland, and in a desire to see the independence of that brave and gallant people re-established; but truth compels me to say, that the cruelties of the Imperial Government towards them have been greatly exaggerated. It is even notorious here, that in several instances, the sons of Polish patriots who died fighting for national independence are receiving their education at the expense of the Emperor, and are treated by him with distinguished kindness. The exaggerated impressions which have been spread throughout the world upon this subject arise, in a great degree, from the want of any thing like a free press in Russia. From this cause, the representations of the injured party pass every where current, almost without contradiction. Still it cannot be denied, that whenever Russian officers are entrusted with power over Poles, it will most probably be abused. This arises from the ancient and malignant personal hatred existing between the two races.

The Emperor afterwards observed, that the English Nation had, in his opinion, been acting very unwisely. They had got tired of a constitution under which they had risen to a high degree of greatness, and which had secured them many blessings; and he feared they were now about to prostrate their most valuable institutions. He then asked me what route I intended to take on my return home. I told him, I should pass through Hamburg, Amsterdam, the Hague and Brussels, to Paris, where I expected to spend a few weeks. From thence, I should pass over to London, and finally embark from Liverpool for the United States. I said, I had no particular desire to visit Paris; on the

contrary, I should rather spend what time I had to spare in seeing a part of England, Scotland and Ireland; but it would be considered strange for an American to return from Europe without seeing Paris,—the centre of so many attractions. This gave him occasion to speak of France. He said, I was quite right in my intention to visit Paris. The French were a singular people. They were so fickle in their character and had such a restless desire to disturb the peace of the world; that they were always dangerous. They had tried every form of government and could not rest satisfied with any. French emissaries were now endeavouring, every where, to excite disturbances and destroy the peace all over Europe.

I observed we had always pursued a different course in America. We were no propagandists. Perfectly satisfied with our institutions, we left to every other nation the task of managing their own concerns, in their own manner. This had been the uniform policy of our Government since its origin.

He replied that he knew the character of our Nation well; and repeated they were a true and loyal people. He had the greatest confidence in them. His own policy was the same as ours. He was no propagandist himself. All he desired was peace. He never interfered with the concerns of other Nations, when it could possibly be avoided. He desired peace above all things for Russia. But, he said, it seemed as if there was, at present, an evil spirit abroad throughout the world. He appeared to be peculiarly the object of its malevolence. (Evidently alluding to the Polish conspiracy.) He was in the hands of the Almighty, and would endeavor to do his duty fearlessly and honestly in the station where Providence had placed him, and in humble submission, would leave the event to his will. Here he was evidently affected.

He then bade me adieu—and embraced and saluted me according to the Russian custom,—a ceremony for which I was wholly unprepared, and which I could not have anticipated. Whilst we were taking leave, he told me to tell General Jackson to send him another Minister exactly like myself. He wished for no better.

Upon leaving his presence, I was sensibly impressed with the vanity of human greatness. The circumstances brought forcibly to memory the closing scene of the life of the Emperor Alexander. Throughout his last illness, he refused to take medicine and thus suffered his disease which was not, at the first,

considered dangerous, to become mortal. When Sir James Wylie, his physician, told him, that unless he would submit to medical treatment his disease must prove fatal; the Emperor Alexander regarded him earnestly and exclaimed, in the most solemn manner. "And why should I desire to live!" He continued to reject all remedies and his death was the consequence. On the truth of this anecdote you may rely. There was no foundation for the report that he had been poisoned.

At the first, I had determined to suppress such parts of this conversation as were evidently confidential, together with the kind things which the Emperor said to me personally; but I afterwards concluded, that it was my duty, under my Instructions to repeat the whole. This is done, under a full conviction, that it will never meet the public eye.

I had, on the same day, my audience of leave of the Empress who was very gracious; but what passed upon this occasion is not properly the subject for a despatch.

I took leave of Count Nesselrode this morning and presented Mr. Clay as Chargé d'Affaires. Time presses and I shall leave him, in his first Despatch, to give you a particular account of this interview. It was entirely satisfactory.

Thus has my Mission terminated: and I cannot be mistaken when I say, that these people now evince a much better feeling both towards our Government, and the head of it, than they did on my arrival. I have taken great pains, upon all proper occasions, to make the character and conduct of General Jackson known. Nothing more was necessary to make the man who enjoys the highest rank in our Country stand, also, the first in their esteem.

I have not seen or heard any thing of Baron Sacken since his arrival in this city.

Within the past few days, it has been known here, that the Emperor had refused to receive Sir Stratford Canning as Ambassador from England. As his reasons were altogether personal, this refusal can produce no serious difficulty between the two Nations. The Russians say that Sir Stratford, when here before, evinced a captious and jealous disposition which rendered him very disagreeable.

I expect to reach the United States about the last of November or beginning of December.

Yours very respectfully

JAMES BUCHANAN.

DIARY, AUGUST 8–SEPTEMBER 13, 1833.[1]

Thursday, August 8, 1833.

I left St. Petersburg. Mr. Bligh, Mr. Gevers and Mr. Clay accompanied me as far as Cronstadt. At 6 o'clock in the afternoon we passed the guard ship and arrived at Travemunde, on Tuesday, the 13th, between 12 and 1 o'clock in the day, after a rough and stormy passage. The boat (Alexandra) has not sufficient steam power for her tonnage, having only 140 horse-power for more than 700 tons, and the consequence is that she can make but little way against a head wind. The price of the passage is 250 roubles ($50), the consequence of an indiscreet monopoly which has been granted by the emperor.

We had on board the Princess Lieven and her two youngest sons, the Princes George and Arthur, called after the late king[2] and the Duke of Wellington—the one about thirteen, the other nine—fine boys. Count Matuscervie was also on board, bound for Aberdeenshire on a hunting expedition. He is excessively fond of horse-racing, hunting and all field sports, and seems to take much greater delight in talking of these subjects, than those of a serious nature. The princess has in a great degree lost that beauty which captivated the king and the Duke of W. Her nose is now sharp and her face somewhat red; but her manners and conversation are very fine. I consider her superior to Matuscervie as a diplomatist.[3] I endeavored to cultivate her good graces, not by assiduous attentions, which are often annoying, but by kind and respectful conduct towards her whenever the opportunity occurred unsought. I succeeded. She is a woman and possesses all the superstitious feelings in regard to omens which distinguish the Russians. The count and myself made a bet on the length of the voyage, and drank the wine be-

[1] Curtis's Buchanan, I. 217–224.

[2] George IV.

[3] Curtis, in his Buchanan, I. 217, in a note, says: "This remarkable woman is regularly chronicled in Encyclopedias and Biographical Dictionaries as a Russian diplomatist. She certainly fulfilled that character in an extraordinary manner for a period of about forty years. When Mr. Buchanan met her, on his passage down the Baltic, she was on her way to join her husband in London. She was then forty-nine. The children referred to both died in 1835. The princess died at Paris, January 25, 1857, at the age of 73. She is said to have been a Protestant. In her later years she was a very intimate friend of M. Guizot, who was present at her death-bed."

fore its termination. This gave her much uneasiness, and the wind became more violent immediately after. The count wrote a complimentary certificate in the captain's [log] book, and it was signed before the close of the voyage. Immediately after we had quite a storm, which continued the whole night. I should have been alarmed myself, but thanks to the Yankee captain with whom I crossed the Atlantic, who would carry sail in a hurricane. Captain Dietz, of the boat, a round-faced and pleasant Dutchman, and a naturalized citizen of the United States, attributed our bad voyage entirely to the circumstance of having a parson aboard (the Rev. Mr. Kneill). He swore he could show all his [log] books and prove that, since he commanded a vessel, he had never made a single prosperous voyage with a clergyman on board. This was added to the stock of the princess's superstition, and I found her uneasy at the idea of having him on board, on their passage from Hamburg to London. I told her I considered it almost a moral phenomenon to see such a woman believing in these presages. She said she had not *un esprit fort*. She could not help it. She said Lady Holland was as bad as herself in this respect. It was she [Lady Holland] who had first informed her that it was bad luck to set out on a journey on Friday. The princess did not believe it; but she had once tried it; her carriage was broken, and she injured, so as not to be entirely recovered for a year.

Lord Wellington, she said, never thought himself wrong. He was always right, in his opinion. He had committed three great blunders whilst he was minister.

The first was in sending Prince Polignac to govern France. The duke had told her that this prince was the greatest man in France. Politeness alone had prevented her from laughing in his face. He was *mediocre parmi les mediocres;* besides, he was obstinate to the very last degree. The second was on the Catholic emancipation question; and the third in refusing all reform after having himself opened the door for it.

Lord Lowther had called to see her in Hamburg, and informed her that there would have been, a few days ago, a new ministry in England, but for the timidity of Sir Robert Peel. I told her I thought this was prudence in Sir Robert. The Tories could not now govern England. She concurred in opinion with me; said the duke was now near seventy, and could not afford to wait, but that was not the case with Sir Robert. We talked

of the Polish question, etc., etc. . . . . Met Mr. Wheaton, his wife and daughter in Hamburg.[1]

Tuesday, at 12 o'clock (day).

We left Cologne and arrived in Aix-la-Chapelle, a distance of nine and a quarter German miles, through Bergheim and Juliers. The latter strongly fortified.

The king of Prussia seems to be determined to strengthen himself in this country. Judging from what I have observed myself and heard from others, he cannot rely upon the affections of the people. Indeed, they talk very freely. They all refer to the days of Napoleon; and compare their situation then with what it is at present. The old maitre d'hotel at Bergheim, who has kept a public house for fifty years, and who seems to be a sensible and honest-hearted old man, told me that the taxes were not half so heavy under Napoleon as they were at present. That he was the greatest man there had ever been in the world, and they loved the French much better than the Prussians. Other travelers, who understand German, have told me that at the public tables they talk of a revolution as certain; without pretending to conjecture when it will take place.

But the king of Prussia is a wise man. He has been taught in the school of misfortune, and has been greatly benefited by the lessons of that stern mistress. There is great freedom of speech allowed throughout the Prussian dominions, and in those east of the Rhine the king is popular, notwithstanding the violation of his promise to give them a constitution. This arises from a general conviction of his wisdom and justice, and particularly from the equal conduct he has pursued towards all classes of his subjects. The people are pleased with him, because his conduct towards the nobles has given them no cause of jealousy. He is a democratic despot, and this is perhaps the true policy of all despots.

In the Rhenish provinces, it is difficult for the people to rebel, in the midst of strong and almost impregnable fortifications and of troops faithful and well disciplined.

Saturday night, August 31, (1833).

Arrived in Paris, and went to lodgings provided for me by Mr. Harris,[2] in the Rue de Paix.

[1] Henry Wheaton.

[2] Leavitt Harris, then United States chargé d'affaires at Paris.

Sunday.

I walked to the Place Vendome, and saw the triumphal column. The statue of Napoleon was again placed upon its summit during the anniversary of what are called here the glorious days of the revolution of July (1830). I also visited the garden of the Tuileries, the Champs Elysées, and the Place of Louis XVI, between the two. Here this unfortunate monarch was executed.

A column is to be erected in the centre, exactly resembling Cleopatra's Needle. There is a model of it now standing. Dined with Mr. Harris—a man sufficiently civil and ceremonious, but a mannerist. . . . . He has been so long in Europe as to have lost much of his American feelings, if he ever possessed them in a strong degree. Not unskilful as a diplomatist. He is remembered kindly in Russia, whilst such men as Bayard and Pinkney are forgotten. He seems to have done his duty in relation to the confirmation of the French treaty by the chambers.

Monday.

Called on the Duke of Treviso (Mortier) and General Lafayette; found them both in the country; took a drive with Mr. Harris into the Bois de Boulogne. He is exceedingly anxious to be appointed minister to Russia. I also visited Notre Dame.

Tuesday.

Visited the Louvre. Whilst there, met very unexpectedly Walter Patterson, Esq., of the State of New York, and Mr. Stevenson and Mr. Burns, of the same State.

Afterwards called with Mr. Harris on Count Pozzo di Borgo;[1] had an interesting conversation with him. He thinks

[1] Curtis, in his Life of Buchanan, I. 220, says: "Carlo Andrea Pozzo di Borgo was a native of Corsica, born at Ajaccio, in 1764. His efforts, along with those of Paoli, to accomplish the liberation of Corsica from the French power, and place it under the protection of England, produced in him a decided leaning against France through his whole career. In 1803 he entered the diplomatic service of Russia, in which he continued for the remainder of his long life, under both the emperors Alexander I and Nicholas I. He was Russian ambassador at Paris from 1815 to the time of his death, with temporary absences in London on special missions. He died in 1845. At the period of Mr. Buchanan's visit to Paris, di Borgo was seventy years old, with as full and varied a diplomatic experience as any man of his time. He was celebrated for the brilliancy of his conversation in

the French selfish, that their courage proceeds from vanity, and that they are wholly unfit for the enjoyment of constitutional liberty. He says they will fight well, when seen, but are incapable of sustaining disasters. He has done everything he could to preserve peace; but if war must come, he thinks the French mistaken as to its result. If one were to judge merely from the striking superiority of the Russian over the French troops in appearance, this conclusion would seem very natural.

Saturday, Sunday and Monday.

So unwell that I could not go out. Mr. Harris made a dinner party of Americans for me on Saturday, which, much to my regret, I could not attend. General Lafayette called and sat nearly an hour with me before he went to this dinner; but I was in great pain the whole time.

Judging from what I have heard from the General, Major Poussin and others, I have no doubt the Republican party are making rapid advances in France. This is not confined to the lower orders, but extends to the highest circles. From all I can observe and learn, they are wholly unprepared for republican institutions. They want political virtue as much as any people. They are very selfish, destitute in a great degree of religion, and are always discontented with the present because they hope something from change. Political virtue, with the exception of Lafayette and a few others, don't exist among them.

The policy of the latter [Lafayette] is that France shall now school herself preparatory to republican institutions, for fifteen or twenty years. But I think he is afraid the change will take place sooner. He has lost much of his popularity in France, because they believe him to be an imbecile, and because he will not lead the Republican party to immediate action. He has lost

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the French language. In the private journal of the late Mr. George Ticknor, written at Paris in ——, I find the following passage: 'I do not know how a foreigner has acquired the French genius so completely as to shine in that kind of conversation from which foreigners are supposed to be excluded, but certainly I have seen nobody yet who has the genuine French wit, with its peculiar grace and fluency, so completely in his power, as M. Pozzo di Borgo.' In a note to this passage Mr. Ticknor adds: 'I have learned since that he is a Corsican, and by a singular concurrence of circumstances, was born in the same town with Bonaparte, and of a family which is in an hereditary opposition to that of the emperor.' It was no doubt with singular zest, that di Borgo, in 1814–15, took part in the great European settlement which dethroned Bonaparte."

all confidence in Louis Philippe, who, in my opinion, is as desirous of being a Legitimate as the Emperor Alexander.

In case of general republican commotions in France, a continental war becomes inevitable. The three great powers of Europe are preparing for it, and if one were to judge from the appearance of the Russian and Prussian soldiers compared with the French, he would be tempted to doubt the result. There is an energy in liberty, however, and there will probably be such an aid to its cause among the oppressed of Germany, Poland and other nations, that we may cherish the hope that France will not be overrun. I do not consider the French either safe or good apostles of liberty. I sincerely hope I am mistaken. Everything here is now Bonaparte; and at present they appear to live upon the memory of their greatness under him.

I ought always to remember with gratitude the kindness of Mr. Emlen, Doctor Fisher and Mr. Patterson [1] during my three days' sickness. Hope to be out to-morrow again.

Thursday, 12th.

Thank God! a fine day. Visited the Duc de Broglie, in company with Mr. Harris. Conversation concerning the omission of the French Chamber to ratify the treaty.

I told him that, however the government here might be able to satisfy that at Washington, and understand each other on the subject, their explanations could not reach the people of the United States. I had no doubt the transaction would give rise to much unpleasant feeling among our people, and might lead to an unhappy state of feeling between the two countries. That I should not be astonished if this were to manifest itself on the meeting of Congress. He said that he was very sorry. Mr. Harris could appreciate his exertions; he was happy to say that the feeling in favor of the treaty was growing; the advantages of the commerce were becoming more manifest, and he had no doubt that one of the first acts which the Chamber would perform after its meeting, would be to ratify it. He hoped it would come so soon that Congress would receive the news before there was any expression of feeling. [He] Criminated Mr. Dupin in relation to it—said he only called for the papers because he knew that all the reports of previous commissions had been against the treaty. He said, although not a member of the administra-

[1] American friends.

tion which made it, he approved it and would now make such a treaty.

September 13th.

I dined to-day with Count Pozzo di Borgo. Before dinner he took Mr. Harris and myself into a room apart from the rest of the company, and told me he wished to communicate to me, so that I might inform the President, on my return, what was the true condition of Europe at the present moment. He said there did not exist at the present any immediate apprehension of war; though from the state of things there was no telling at what time war might take place.

Everything was unsettled in France; they were a turbulent and restless people, and busily employed with their propaganda. They were wholly unfit for liberal institutions; and, in fact, these were not what they wanted. They wished again for the glory of the times of Bonaparte. He could himself, in a month, raise an insurrection in France; but what the allied powers wanted was peace, and peace they would maintain so long as they could consistently with propriety. That this they did not wish from fear of the result. Far from it. They, to wit, Russia, Prussia and Austria, were indissolubly united, and war with one would be war with all.

Those three powers, with the German Confederation, could, in three months, bring an army of 600,000 men into the field, 500,000 infantry and 100,000 cavalry, and have an army of reserve of the same number. The French journals were continually attacking them without cause, for interfering with foreign states, but I understood him to say that Austria would interfere in Piedmont, and if the French should attempt to prevent it, the allies would make common cause against them. They disliked and distrusted France very much; England not so much. If the latter would act a prudent and proper part, she might have great influence on the affairs of Europe; but the English ministry were fools. They were encouraging France, and yet it was almost certain they would not fire a gun in defence of the latter. England depended upon her commerce, and she could not afford to lose that of the whole continent of Europe, which she would do in the event of war. She had acted very foolishly in giving Belgium to France.

What he wished me especially to tell the President was that he hoped the United States in the event of a war would cause their neutrality to be respected, and would not suffer the exist-

ence of illegal blockades. That in the event of war, England would have every interest to cripple American commerce; for, in that event, the commerce of the world would fall into the hands of Americans. That the English must even use their vessels to carry articles essentially necessary to them from the north of Europe.

I promised I would communicate all he had said to the President, and observed that when we were comparatively feeble, we had gone to war for the purpose of maintaining our neutral rights upon the ocean; and that at this time of day, when we were much more powerful, neither the President nor people of the United States would suffer them to be violated with impunity. Our policy was peaceful; we never interfered with the political concerns of other nations. The strictest neutrality we should observe both from principle and from policy. This had been the course of our Government ever since the celebrated proclamation of neutrality of General Washington, which I explained to him. I was not now afraid that England would, as she had done before, attempt to violate the neutral rights of a nation which in six months could put to sea fifty ships of the line and heavy frigates. He expressed some admiration and astonishment at this statement, which was confirmed by Mr. Harris, and observed he could not believe that they would.

The conversation then turned upon the French treaty. He said he had been speaking several times to Broglie, as he called him, upon the subject. He had done what he could for us. Broglie was well disposed, and he thought with the assistance of Lafayette and his friends, it would be ratified very early in the next session. I told him I had understood that Mr. Dupin, the President of the Chamber, was rather opposed to us. He said that Dupin was an unprincipled man, I think he said a rascal, very selfish, and fond of money. He was now receiving a pension of 200 or 300 pounds. I did not understand exactly from whom.

After we went to table, we had much conversation in nearly the same strain. He told me he wished I could be present at two or three sittings of the Chamber. They were like cats, all in a passion, and all making a noise, and afterwards laughing; wholly unfit for liberty. They wanted such a man as Bonaparte and glory again, not liberty.

Before we went to table I asked him what he thought of Louis Philippe, and whether the allied sovereigns had confidence

in his character. He answered equivocally. Said Louis Philippe might be well disposed; but he might be controlled by the factions, and made to do what he did not approve. His government wanted strength.

At table, in speaking of the emperor [Nicholas], I said I had taken occasion, since my arrival in France, to speak of the personal character of the emperor to some persons, as I thought it deserved. He replied as if I had mentioned the name of Lafayette, which I did not, and asked what Lafayette had thought of that. I said that General Lafayette was aware of the good personal character of the emperor, and that of the empress, and the happy influence of their example on the Russian nobility, and had freely admitted it. He said that the general had lost his influence with Louis Philippe, and in a great degree in France. I observed that whatever opinion others might express concerning him, I considered it the duty of every American to speak with gratitude of him. Mr. Harris here shook his head at me, but I continued to talk about him, and the donation we had made him. The count said it was all spent, and I replied I was very sorry for it. Various subjects were talked over, and the count took leave of me in the kindest and most affectionate manner. He was glad to have an opportunity of communicating this information to a gentleman of my character, who had been sent on a special mission to Russia, and acquitted himself in such a manner as I had done. General Jackson might probably have never heard of him; but he had often [heard] of the general, and respected his character very highly. I told him his name was known throughout the political world. General Jackson would be proud of his good opinion, which I should not fail to communicate.

I forgot to mention that, at the proper place, I introduced the subject of the treaty concerning maritime rights, and said one object of my mission was to make a treaty which should assert these rights as between the two nations. He replied that he presumed it had been explained to me that the reason why Russia did not accede to this treaty at the present moment was the delicate relations between them and England. Such a treaty at this time would set England in a flame. Russia was but a second-rate naval power. She agreed, however, entirely with the principles concerning maritime rights maintained by us, and at the proper time would assert them in the same manner as if she had entered into the treaty. In the course of the conversa-

tion, he observed that the influence of Russia was firmly established in Constantinople. Yes, I observed, she had been acting whilst the other powers were talking. I asked the true character of the sultan, and he spoke of him as rather a wavering and weak man, etc.

TO GENERAL JACKSON.[1]

London 21 September 1833.

Dear General,

Mr. Vail has just informed me that he will send off his Despatches to day for the Packet of the 24th and I take this occasion to address you a few hasty lines. I shall have an interesting communication to make to you, which I received from Count Pozzo di Borgo at Paris, in relation to the general politicks of Europe. This I must defer until I reach Washington. I think, however, you may rest satisfied that the allied sovereigns have not met with any intentions of immediate hostility. Their sole purpose has been to confirm and strengthen the bonds of union existing among themselves and to be prepared to crush France, if possible, with an overwhelming force, in case there should be any new movements in that Country, which might, in their opinion, render war necessary.

Our position in the world is now one of much importance. The allied powers entertain no jealousy towards us. It is their policy to promote our power, and to render us the commercial rivals of England and France. You will, no doubt, have been informed ere this reaches you, of the desire felt by Prussia and Austria to establish diplomatic relations with our Country; and I need not suggest to you the importance of meeting their advances.

On the other hand, judging from an interview I have had with Lord Palmerston, I have no doubt of the friendly dispositions of the British Government. These have been increased by the confidence felt in your administration. I am convinced this is an important moment both for the success of your foreign policy and the still higher elevation of your personal character. I am convinced a minister ought to be sent here without delay. An able and a discreet man who knows when to speak and what

[1] Jackson MSS., Library of Congress.

to say, and who has a talent for general society, could do much, very much, to confirm the favorable impressions which have already been made in England. Besides, if I am at all acquainted with the character of Lord Palmerston, such a man could do more to settle the questions still in controversy between the two nations, by personal conversations, than can possibly be effected by diplomatic correspondence at Washington. Mr. Vail is every thing that a man of his age in his station could be; but still in the present state of the world one of the very first men of our Country, holding the rank of a minister, ought to represent us in England. The selection of a proper man is in the very best hands.

I shall remain in London until Wednesday next, for the purpose of dining with Prince Lieven on Monday and Lord Palmerston on Tuesday. Should an opportunity offer with the latter, and he seems very willing to talk freely and confidentially with me, I shall not fail to improve it for the benefit of our Country. Indeed the freedom and friendship with which I have been treated every where are an evidence of the high character of our Country abroad.

I shall have a precious dish of gossip for you on my return should you have time to partake of it. Circumstances have placed me in a situation to hear much from the Princess L—— concerning our diplomats in England; and I was glad to find she spoke in the highest terms of Mr. M'Lane and Mr. Van Buren. Mr. Vail is also a favorite.

I expect to sail from Liverpool on the 8th of October, and shall return to my country and to private life with the greatest pleasure; but in whatever situation I may be placed, rest assured that I shall always remain your grateful and affectionate friend

JAMES BUCHANAN.

GENERAL ANDREW JACKSON.

P. S. Please to remember me to your family, and to Mr. M'Lane and Major Barry.

DIARY, SEPTEMBER 23–24, 1833.[1]

Monday, September 23.

Dined at Prince Lieven's.

The company were the Prince and Princess, Prince Talleyrand and the Duchess de Dino,[2] Prince Esterhazy, Baron Wessenberg, Lord Palmerston, Baron Bülow, Mr. Dedal, Mr. Vail, the Earl and Countess of Setton, Mr. Lomonosoff and myself—fourteen. The whole London conference there. A dinner given to Prince Talleyrand, who left London the next day for Paris.

They were all very civil and kind to me, particularly Princess Lieven, Lord Palmerston and Prince Esterhazy. After dinner, I was introduced to Prince Talleyrand by Lord Palmerston, at the solicitation of the latter. He at once asked me, in French, if I could speak French. I told him not well, but I could understand it. He then asked some questions about America, and inquired particularly for the family of General Hamilton, and about the descendants of General Schuyler. He said that when he was minister for Foreign Affairs, Colonel Burr came to Paris and sent his card to him. He returned the card, with a message that he had the portrait of General Hamilton hanging up in his parlor.

They told me, before I made his acquaintance, that though eighty-three, by his own acknowledgment, his mind was as active as ever. This I doubt. He has the appearance of a very old man, though not very thin, like the French. At dinner he spoke very little, though he ate with a good appetite. They say he eats but one meal a day. After dinner he was a little more sprightly. He accepted an invitation to dine again with the Prince and Princess on the 8th December, at half-past seven, with pleasantry. Baron Bülow told me the next day that his ability and skill in the conference were wonderful. He would lie down and say nothing whilst all the rest were talking, but when they got tired and into confusion, he would come out with great power, and restore all things to their proper order.

Lord Palmerston did not arrive at the dinner till after we had sat down, about eight o'clock. They say he is never punctual. He is an agreeable and open-hearted man to appearance. I had much conversation with him on three occasions, particularly after his own dinner, and he must be a great hypocrite if not in favor

[1] Curtis's Buchanan, I. 224–226.

[2] The wife of the Duc de Dino, Prince Talleyrand's nephew.

of promoting the most friendly relations between England and the United States. Prince Esterhazy on this day expressed his admiration of the President, and his warm friendship towards the American people, and said this was the feeling of Prince Metternich. He had recommended to the emperor to open diplomatic relations with us, which the latter had acceded to, and a minister would soon be sent. He spoke of his own country, Hungary, with great devotion, and said he never would have been a diplomat but for the friendship of the late king (George IV.). He pressed me several times to give Americans letters of introduction to him.

Tuesday, 24.

Dined at Lord Palmerston's.

Lord Palmerston's dinner consisted of his Lordship, Princes Esterhazy and Lieven, Barons Bülow, Wessenberg and Ompteda, Mr. Backhouse, Mr. Vail, Mr. Bacourt, Sir George Shea, Mr. Sullivan, Mr. Sullivan, Jr. and myself.

I sat next Baron Bülow at table. He talked freely of the conduct of the King of Holland. Blamed his obstinacy and perverseness. Said he might yet bring ruin on his own head. The Dutch were an excellent people. He had deceived them, induced them to believe that all he wanted was the separation of Holland from Belgium upon fair terms, when he was only keeping the question open in the hope that he might get Belgium under his dominion again, which the Dutch did not wish. When they discovered they had been deceived, he did not know what might be the consequence. He said he could not anticipate when the conference would end. The King of Holland could have got better terms formerly than it was possible for him now. He told me *significantly* that the King of Prussia would not meet the emperors of Russia and Austria in conference. The whole conversation coming from the Prussian minister to the conference astonished me.

Mr. Bates[1] told me the English were fifty years behind the Americans in commercial enterprise and shipbuilding. He was examined before a committee of the House of Commons. When

[1] Joshua Bates, an American by birth, who became head of the banking house of the Barings. He gave the first effective impulse to the foundation on a broad basis of the Boston Public Library. He served as umpire under the Anglo-American claims convention of 1853. See A Memorial of Joshua Bates from the City of Boston: Boston, 1865; Moore, International Arbitrations, I. 398–400.

questioned upon this subject, he said he had been kindly received and treated in England, and did not like to answer the question and have his answers published. They then told him to give his opinion, and it should not be taken down.

He told them the reason of the superiority was in the character of masters and sailors. They were educated, had a sense of character and responsibility, entirely different from the same classes in England. Masters were respectable men, and sailors were now shipped from a reading-room in Boston.

He expressed his opinion to me that the Americans would, before long, carry on the chief trade between England and China. Everything favored them. The destruction of the East India Company's charter and of the West India merchants, etc.

[He speaks of] The astonishment of the shipbuilder, when he gave the dimensions of a vessel to him, and his astonishment afterwards at being shown the American vessel which was his model, etc.

FROM ANDREW JACKSON.[1]

WASHINGTON Nov. 18th 1833.

MY DEAR SIR,

I have received your note by Mr. John Van Buren and am delighted to hear that you have reached your country in good health, after so long an absence in her service. I anticipate much pleasure from the personal interview which you have promised me I shall have in the course of this week, but do not desire to hasten you more than your convenience or the wishes of your friends will permit. I leave until then all else that I would say except my congratulations on your safe arrival, which I beg you to accept with my best wishes for your health & happiness.

Very sincerely & Respy. yr. sert.

ANDREW JACKSON.

HONBL. JAS. BUCHANAN.

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[1] Buchanan Papers, Historical Society of Pennsylvania. Imperfectly printed in Curtis's Buchanan, I. 228.

1834.

TO COL. JAMES PAGE.[1]

Confidential.

LANCASTER 17 January 1834.

MY DEAR SIR/

Ever since my return from Harrisburg I have been thinking of addressing you on a subject which will manifest my entire confidence both in your friendship & discretion. General Jackson once alluded to it but I then told him I did not think there was any prospect of success.

I confess I was astonished & agreeably disappointed at my reception in Harrisburg. I had not the most remote idea of my own standing with the Democratic members of the Legislature. Many, & those the most influential, without reserve, told me that Pennsylvania *must* have the Vice President & if their opinions had sufficient influence I should be nominated for that office by the National Convention. When Mr. Van Buren & myself were toasted together the applause was louder & more general than on the reception of any other toast. The western members expect Mr. Wilkins will soon obtain an Executive appointment & then they will be left at perfect liberty to act. I must be greatly mistaken if in that event I should not be elected to the Senate without difficulty.

The object of this letter is to ascertain your opinion upon the subject. I can entertain none but what will comport with the harmony of the party throughout the Union. Speak freely to me & in the confidence of friendship. If you think proper you may shew this to our friends Horn, Toland & Leiper, but to no others.

All's well at Harrisburg.—The party are firm & decided in support of Gen. Jackson's administration & in opposition to the Bank.

With sentiments of respect & friendship
I remain truly yours

JAMES BUCHANAN.

COL: JAMES PAGE.

[1] Buchanan Papers, Historical Society of Pennsylvania.

TO GENERAL JACKSON.[1]

LANCASTER 18 January 1834.

DEAR GENERAL

I herewith transmit you, according to promise, a memorandum of the conversation between Count Pozzo di Borgo & myself at Paris in September last. It will perhaps serve to beguile a leisure hour,—after the great affairs which are now pressing upon your time & attention shall have had their day. The Count, as a diplomatist, is considered equal to any man in Europe, not even excepting Talleyrand & Metternich.

My visit to Harrisburg has been one of unmixed gratification. The democratic members of our Legislature are fixed & immoveable in their support of your administration. The Bank are entirely mistaken in supposing that the pressure which they have occasioned will operate in their favor. Directly the contrary is the truth. The more they make their power felt, the more alive the people will become to the dangers which threaten them from a continuance of that Institution.

I confess I was most agreeably disappointed in regard to my own standing in Pennsylvania. I find I was entirely mistaken in this respect when I last had the pleasure of conversing with you on the subject. This mistake arose from the influence which I know has been long exerted in a certain quarter to keep me down. If the election for Senator were now to take place I think I should succeed without difficulty. Several of the most influential among the members of the Legislature have spoken to me of a situation to which you had the kindness to allude when I was in Washington; but I shall never suffer my name to be used unless it can be done in consistency with the strength & harmony of the Republican party upon which I am convinced that the permanence & prosperity of our Institutions, in a great degree, depend.

Please to remember me kindly to Major & Mrs. Donaldson & to Colonel Earle & believe me to be ever

Your grateful & affectionate friend

JAMES BUCHANAN.

GENERAL ANDREW JACKSON.

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[1] Buchanan Papers, Historical Society of Pennsylvania.

TO GENERAL JACKSON.[1]

Lancaster 15 July 1834.

Dear General/

The decease of our lamented friend General Porter[2] leaves a vacancy for which you will no doubt have many applicants. Amongst others, General Simon Cameron of this State is desirous of obtaining the appointment. He is an intelligent, shrewd and enterprising man, and so far as I am capable of judging would be as well qualified to conduct the administration of a territory as any person within my knowledge. His influence is extensive & powerful throughout this State, and to my knowledge many of the Democratic members of our last Legislature were among his warmest friends. I need scarcely add that his politicks are sound in every respect.—If, consistently with your views of public duty, you can confer this appointment upon General Cameron, it would be very gratifying to his numerous friends in Pennsylvania & to no one more than myself.

General McKean has I think been taught by the 4th of July toasts that he did not obey the will of his constituents in voting for the restoration of the deposits.—I am just about setting out for the Western part of this State to visit a sick sister. I may probably trouble you with a letter before my return. In the mean time believe me to be your ever faithful & devoted friend

James Buchanan.

Gen: Andrew Jackson.

TO GARRETT D. WALL.[3]

Lancaster 26 August 1834.

My Dear Sir/

You may perhaps have observed from the papers that I have been appointed one of the Commissioners of this State. in regard to the use of the waters of the Delaware. It was not

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[1] Buchanan Papers, Historical Society of Pennsylvania.

[2] George B. Porter, a native of Pennsylvania, who was governor of Michigan Territory from 1831 to 1834.

[3] Buchanan Papers, Historical Society of Pennsylvania. Mr. Wall was an eminent citizen of New Jersey. From 1835 to 1841 he represented that State in the United States Senate. He was afterwards a Judge of the New Jersey Court of Errors and Appeals.

convenient for me to accept the appointment; but as it is the only one which had ever been offered me, without compensation, I had no alternative. I felt happy that I should be called upon to act with you; both for the pleasure of meeting you, and from a full knowledge, that so far as you were concerned, if any thing could be done, it would be done promptly.

Mr. Burke has requested me to ascertain from you at what time it would be most convenient for the Jersey Commissioners to meet us, and has suggested the New Hope Hotel, now kept by Mr. Smith, as the most proper place of meeting. I would make it my business to attend on almost any day you might appoint; but after you shall have suggested a day, I will immediately inform my colleagues, and ascertain from them whether it will suit their convenience. Mr. Burke believes that Mr. Vaux has not yet returned from the Saratoga Springs.

from your friend, very respectfully

JAMES BUCHANAN.

GARRET D. WALL ESQUIRE.

TO ROBERT VAUX.[1]

LANCASTER 30 August 1834.

DEAR SIR/

About a fortnight since, on my return from the West I wrote to Mr. Burke, & requested him to inform me what time & place had been appointed for the meeting of the Commissioners in relation to the use of the waters of the Delaware. To this he replied on the 22d that you & he had agreed to meet on the first Monday of September; but he adds "I don't think that Mr. Vaux has returned from Saratoga, besides it will be impossible to have a meeting at so early a day."

Mr. Burke also requested me to open a correspondence with Mr. Wall for the purpose of fixing a day for the meeting of the joint Commission at New Hope. This I did on the 26th Inst., & have delayed writing to you until this moment, in the hope that I might be able to communicate his answer. I now write, lest by possibility you may have had no communication with Mr.

[1] Buchanan Papers, Historical Society of Pennsylvania. Mr. Vaux was an eminent citizen of Philadelphia.

Burke & might go to New Hope or Easton on Monday next. As soon as I shall receive an answer from Mr. Wall I will inform you of its contents.

With sentiments of the highest respect I remain yours truly

JAMES BUCHANAN.

ROBERT VAUX ESQ.

TO GARRETT D. WALL.[1]

LANCASTER 14 October 1834.

MY DEAR SIR

Mr. Gay, one of our State Engineers, with whose character you are acquainted, will be at Trenton on Tuesday next, and would be happy to meet any Engineer from your State whom you may select. He has requested me to suggest the name of Mr. Olmstead as that of a gentleman with whom he is well acquainted & would be pleased to co-operate. We have no desire, however, to influence your choice.

I should have written to you sooner; but such have been the hurry & bustle in opening our Rail Road, and so numerous are the duties of Mr. Gay, that he has not sooner been able to appoint a day. Should any accident prevent him from being at Trenton on Tuesday, (which he does not at present anticipate) he will write to you immediately.

With sentiments of respect

I remain your friend

JAMES BUCHANAN.

GENERAL GARRET D. WALL.

FROM HENRY WHEATON.[1]

COPENHAGEN, 3 Dec. 1834

MY DEAR SIR,

I have been intending to write you ever since I came here, but have been waiting until I should hear something positive from home as to my future destination. My anxiety on that subject is not yet relieved, although the confidence I have in the P's character will not permit me to doubt that he will fulfill his avowed intentions in respect to that matter. I feel rather mortified after seven years of successful service in this line to be compelled

[1] Buchanan Papers, Historical Society of Pennsylvania.

to ask the support of my friends in aid of my advancement. You are fully aware how very inadequate is the compensation allowed to our diplomatic agents in Europe to enable us to *exist* without absolutely disgracing the country we represent, & that the only mode in which the Gov't can correct this inadequacy is by making frequent changes. Even if I should be *translated* at this moment the Gov't would still be my debtor even after the receit of a new outfit as Chargé d'Affaires. This state of things is the more inconvenient to me, since the very serious expences I have been compelled to incur by the law-suit relating to the Copy Right of my Reports—The P. is fully informed of the *extraordinary* circumstances connected with the decision of that case in the Supreme Court & the countenance Peters has met with in attempting to plunder me of the fruits of 12 years labour. But neither he, nor any other of my friends, can be aware of the extent of the pecuniary injury that has been done me—I merely allude to the circumstance to enable you to account for my solicitude in respect to my *avenir*.

Were I to consult my ambition & pride alone I should not be satisfied with any thing short of promotion to the rank of Minister plenipo. Even as things are, I cannot help thinking that if the mission at Paris should become vacant in the course of next year, it would be no presumption in me to think that my peculiar qualifications & the experience I have acquired of European affairs & forms of business might *possibly* be thought to outweigh considerations of mere temporary *politics*. I flatter myself that I know France, & Frenchmen, their language, laws, & literature as well as any of our *living* countrymen who have enjoyed the advantage of being in Europe, & better than most of those who have not been out of their own country. But I am growing egotistical, & must forbear.

If you see no objection to such a course, I should be much obliged if, on the receit of this, you would write the P. again on *my subject*, in order to freshen his recollections & make assurance doubly sure. I am aware that in the midst of the ardent struggle in which he is engaged, these affairs can only occasionally arrest his attention, & that it may not be superfluous to remind him once more of your sentiments in regard to me.

Should you have time to favour me with a few lines, let me know what are the political prospects at home.

Mrs. W., who remembers with lively pleasure the few days we spent together at Hamburg, joins me in cordial wishes for your health & prosperity.

I am, my dear Sir, very truly your friend

H. Wheaton.

FROM JACOB KERN ET AL.[1]

Hon. James Buchanan Harrisburg Dec. 8 1834

Dear Sir

Ere this reaches you, doubtless you will have been notified of your election to the Senate of the United States by the Legislative body of this state, to which we have the honor to belong. And it is with unfeigned

[1] Buchanan Papers, Historical Society of Pennsylvania; Curtis's Buchanan, I. 228.

gratification that we individually can claim a participation in the confidence which has on this occasion been reposed in your talents and integrity. Nor is that gratification by any means lessened, from the consideration that you are the personal as well as the political friend of both our State and National Executives, who have done so much within their respective spheres to exalt the character and promote the interests of our State and Nation. And above all, who in their Official relations so nobly stood forth in the rescue of our common country from the grasp of a corrupt monied monopoly, as reckless as it was aristocratical, and as merciless as it was powerful. And it is with no less pride than pleasure that we shall look to you, in your new and high relations, as the champion of the measures projected by our venerable President Andrew Jackson and seconded by our worthy Executive George Wolf.

Respectfully your friends and obedient servants

[Signed by] JACOB KERN.

[and sixty-nine other Members.]

TO JACOB KERN ET AL.[1]

WASHINGTON, Dec. 22, 1834.

GENTLEMEN:—

I want language to express my feelings on the perusal of your kind letter, which was delivered to me at the moment I was about to leave Harrisburg. Elevated by your free and unsolicited suffrages to the only public station I desire to occupy, it shall be my constant endeavor to justify, by my conduct, the generous confidence which you have thus reposed. The interest and the honor of Pennsylvania, so far as you have committed them to my hands, shall never be wilfully abandoned or betrayed.

Although you have not asked me for any pledge or promise relating to my course in the Senate, yet I am sensible that many of you desire I should express my opinion publicly in regard to the right of legislative instruction. I shall do so with the utmost frankness. On this question I have not, and never have had, any serious difficulties. The right results from the very nature of our institutions. The will of the people, when fully and fairly expressed, ought to be obeyed by all their *political agents*. This is the very nature and essence of a representative democracy.

Without entering into an argument upon the general question, which would be altogether misplaced upon the present

[1] Curtis's Buchanan, I. 231.

occasion, it may not be improper to observe that the principle applies with redoubled force to Senators in Congress. They represent the sovereign States, who are the parties to that constitutional compact which called the federal union into existence. In the Senate, these States are represented as distinct communities, each entitled to the same number of votes, without regard to their population. In that body they are all equal, as they were before the adoption of the federal constitution. Here, emphatically, if any where, the voice of the States ought to be heard, and ought to be obeyed. Shall it then be said that a Senator possesses the constitutional right to violate the express instructions of the sovereign State which he represents, and wield the power and the vote which have been conferred upon him for the benefit of his constituents in a manner which they have solemnly declared to be ruinous to their dearest interests, or dangerous to their liberties! The bare statement of the proposition carries conviction to my mind. All, or nearly all the State Legislatures, have long been in the practice of instructing their Senators, and this affords the strongest evidence of the principle upon which the custom is founded.

It has been objected, that the right of instruction may destroy the tenure of the Senatorial office, and render it subject to all the political fluctuations in the several States. But the Senator is only bound to obey: he is not called upon to resign. And although there may be circumstances in which a man of honor might feel himself constrained to retire from the public service rather than give the vote of his State against his own convictions, yet these cases must, from their nature, be of rare occurrence.

Besides, this objection implies an entire want of confidence in the State legislatures. It supposes that they may become the instruments of faction for the purpose of harassing Senators, and compelling them to resign. In fact, it results in the principle that the people are incapable of managing their own concerns, and are, therefore, under the necessity of conferring an irresponsible political power upon one of their own number, to save them from themselves. From the nature of our institutions, we must repose such a degree of confidence in the State legislatures as to presume that they will not abuse the power with which they have been intrusted.

If it should ever clearly appear, in any case, that the immedi-

ate representatives of the people have not obeyed their will in voting instructions, this might present an exception to the general rule. Such an occurrence, however, though possible, is highly improbable. It is not to be presumed that State legislatures will exercise this important power, unless upon grave and solemn occasions, after mature deliberation and a thorough knowledge of the public will.

I have thus expressed my opinion freely upon this important question, though I am well aware it differs from that of some of the ablest and best men of our country.[1]

In relation to the course which I intend to pursue in the Senate, I shall say but little. My conduct must speak for itself. I feel sensible that in point of ability I shall disappoint the partial expectations of my friends. To become distinguished in that body, the ablest in the world in proportion to its numbers, requires a stretch of intellect and a range of political knowledge and experience, which I do not pretend to possess. Whilst, therefore, I cannot become "the champion of the measures projected by our venerable President," I shall, both from principle and inclination, give them an honest and consistent support.

Before concluding this letter, permit me to state my entire concurrence in the sentiments you have expressed concerning "our worthy executive, George Wolf." In the darkest hour of pressure and of panic during the last winter, when the internal improvements of the State were, to all appearance, about to be arrested, he stood unmoved, and met the storm in a manner which proved him to be the able, faithful, and fearless representative of Pennsylvania Democracy. His message contributed much to dispel the gloom which, for a time, seemed to have settled on

[1] Curtis, in his Life of Buchanan, I. 230, says: "Upon this vexed question of instruction there is perhaps no more important distinction than that which was drawn by Mr. Webster in his celebrated speech of March 7, 1850: namely, that where a State has an interest of her own, not adverse to the general interest of the country, a Senator is bound to follow the direction which he receives from the legislature; but if the question be one which affects her interests, and at the same time affects equally the interests of all the other States, the Senator is not bound to obey the will of the State, because he is in the position of an arbitrator or referee. The first proposition seems evident enough, but of course it embraces none but a limited class of questions. It is in the far more numerous cases which fall under the second proposition that the difficulty inherent in the doctrine of instruction arises. Mr. Buchanan, it will be seen hereafter, consistently acted upon the view with which he began his senatorial career."

our country. It was the bright dawn of that glorious day of prosperity which we have since enjoyed.

With sentiments of the most profound gratitude and respect, I remain Your obedient servant,

JAMES BUCHANAN.

1835.

REMARKS, JANUARY 5, 1835,

ON A BILL TO REFUND CERTAIN DUTIES.[1]

Mr. Buchanan said he had the misfortune, on this question, to differ from the Senator from Missouri, (Mr. Benton.) He need not say he entertained a great respect for his judgment; but he would remark, that, to himself, the principle of the bill was perfectly clear. He had thought so on Friday last, when he voted for its engrossment, and still continued to be of the same opinion.

He inquired, what was the true principle of the bill? In all civilized countries, it was a uniform, cardinal principle, that all laws should be prospective, and never retrospective. It would be unjust, in the highest degree, to subject the citizens of a country to the operation of a law before it was possible that they could be acquainted with its existence. This was a principle of such manifest justice, that it could not be denied, or even doubted. Sufficient time ought always to be given to enable those whom the law was destined to affect to become acquainted with it, and to accommodate their conduct to its provisions. It was upon this very principle that France had agreed to indemnify American citizens for the captures made under the Berlin and Milan decrees, before they could have known of the existence of these decrees. This is the very principle upon which the present bill rests. Its object is to grant relief from the onerous effects of the tariff law of April, 1828, in cases in which our importing merchants were not and could not be acquainted with its existence in time to regulate their conduct by a knowledge of

[1] Cong. Globe, 23 Cong. 2 Sess. II. 92. A less accurate report of the remarks may be found in the Register of Debates, 23 Cong. 2 Sess. XI., part 1, pp. 92–93. Mr. Buchanan took his seat in the United States Senate December 15, 1834. His certificate of election was filed on December 8

its provisions. This law had, consequently, operated retrospectively upon their interests, and, therefore, unjustly. What, then, was the object of the bill? It was to do no more than ought to have been done by the act of 1828. It was merely to correct the injustice which had resulted from our own legislation.

This bill seemed to be exceedingly well guarded against fraud. No person could obtain relief under its provisions, until he had satisfied the Secretary of the Treasury, not only that he had ordered goods from a foreign country before he could have known of the passage of the act of 1828, but also that after he had been informed of its passage, it was too late to countermand the order. This was indispensable. But more than this was required. A person claiming relief, must, in addition, satisfy the Secretary of the Treasury, by his own oath, or other proof, that he had actually sustained a loss in consequence of his ignorance of the existence of the act; and an indemnity for this loss was all which could be demanded.

He was as desirous as any gentleman could be of taking care of the public money; but he was equally disposed to do justice. He would vote for a general re-commitment of the bill, because he thought that it might with propriety be confined to importations made at an earlier day than the 31st December, 1828, and he was willing to restrict its operation within the narrowest limits which justice would admit. But let the bill come before us when it may, he would vote for it; because he was unwilling to bind our citizens by a law with which they could not, by any possibility, have been acquainted in time to save themselves from injury. This injustice had been done by the act of 1828, and he was anxious to correct it, and thus relieve the character of our legislation from the odium which must attach to it by the passage of an act in its nature retrospective.

REMARKS, JANUARY 14, 1835,

ON RELATIONS WITH FRANCE.[1]

Mr. Buchanan said, he should be exceedingly rejoiced if we could adopt any form of words which would unite the vote of the Senate on this occasion. He would go as far as any man to make concessions, in any matter in which principle was not involved, for the purpose of presenting ourselves to the world as a united nation. However we might differ amongst ourselves, as to matters of internal policy, we ought always to exhibit a bold and united front to foreign nations in defending the interests and honor of the country.

Mr. B. felt great pleasure in doing justice to the frank and conciliatory spirit of the Report of the Committee on Foreign Relations. It was a statesman-like production, worthy of its distinguished author; but, he must be permitted to say, that if this were the proper occasion for such a discussion, he thought he could successfully controvert several of the positions which it contained, and show that they were founded in error.

He would greatly prefer that the resolution proposed by the Senator from Georgia (Mr. King,) should stand as he had introduced it. It contained upon its face the reason, and the only reason which would induce him to vote for any resolution of this character. It was simply because the French Chambers had been convened earlier than was expected by the President of the United States at the commencement of the present session of Congress, that he would give his support to any such resolution. He should, therefore, be gratified if this preamble could be retained.

France had, before the close of the last session of Congress,

[1] Cong. Globe, 23 Cong. 2 Sess. II. 125, 126. President Jackson having recommended that he be empowered to resort to reprisals, in case the French Chambers refused at the then pending session to appropriate money to pay the claims of citizens of the United States which were settled by the Rives treaty, Mr. Clay, from the Committee on Foreign Relations, presented a report, accompanied with a resolution to the effect that it was inexpedient at that time to pass any law vesting in the President authority for making reprisals on French property, in the contingency mentioned. Mr. King, of Georgia, offered a substitute for the resolution, to the effect that it was inexpedient to pass any law on the subject "until further information shall be received from France." After some remarks by Mr. King, and a reply by Mr. Clay, Mr. Buchanan spoke. For a history of the controversy over the Rives treaty (July 4, 1831), see Moore, International Arbitrations, V. 4458, et seq.

communicated to the President, that it was the unanimous determination of the King's Government to appear before the new Legislature with its treaty and its bill in hand, and that its intention was to do all that the charter allowed to hasten, as much as possible, the period of the new presentation of the rejected law. On the faith of this assurance, the President rested satisfied, and did not present the subject to Congress at its last session. How has France redeemed this pledge? Has that Government hastened, as much as possible, the presentation of the rejected law? At the first meeting of the new Legislature, the law was not presented; and, in the face of this engagement, the Chambers were prorogued, not to meet in the Autumn, as they might have done, but, on the 29th of December, the very latest day which custom had sanctioned. If this assurance had any meaning at all, it was that the Chambers should be convened at least so early in the season as to afford sufficient time to communicate the fact to the President before the meeting of Congress. The President, at the date of the message, was not aware that the Chambers would assemble on the first of the month. No such information had been communicated to him. The French Government had never informed him such was their intention. It now appears that they did assemble on that day; and, for his own part, he was willing to wait until the result of their deliberations could be known.

What effect this circumstance might have produced on the President's determination, he was not prepared to say. Every gentleman could judge for himself. He was not possessed of any information on that subject.

There is a point, said Mr. B., in the intercourse between nations, at which diplomacy must end, and a nation must either consent to abandon her rights or assert them by force. After having negotiated for a quarter of a century, to obtain a treaty to redress the wrongs of our injured citizens—and after the French Chamber has once deliberately rejected that treaty, will not this point have been reached, should the Chamber again refuse to make the appropriation? If this be so, is it not right, is it not fair, to present this alternative to France? Would she not have just cause to complain, if we did not adopt this very course? To inform her frankly and fairly that we have arrived at this point, I am solemnly convinced, is the best diplomacy to which we can resort, to redress the wrongs of the injured claimants. France will then have the alternative distinctly presented; and it will be

for her to decide, whether she will involve herself in war with her ancient ally, rather than pay those claims which the Executive branch of her own government has determined to be just, by a solemn treaty. Such an attitude on the part of the United States, will do more to accomplish the execution of the treaty, than any temporising policy which we can adopt. I never was more clearly convinced of the truth of any proposition.

France, from the tone and language of the President, will have no right to consider this a menace. It is no more than to say, diplomacy has ended, and the treaty must be executed, or we shall, however reluctantly, be compelled to take redress into our own hands. We cannot, we dare not, abandon the just rights of our own citizens, however painful it may be for us to assert them. France is a brave and a chivalrous nation; her whole history proves that she is not to be intimidated, even by Europe in arms. But France is wise as well as warlike. To inform her that our rights must be asserted, is to place her in the serious and solemn position of deciding whether she will, for the sake of a few millions of francs, more or less, resist the payment of a just debt by force. Whenever she is convinced that this result is inevitable, the money will be paid; and although, I hope I may be mistaken, I believe it will never be paid before. France has never appeared to regard the question in this serious light.

It has been asked what would the American Congress do, placed in similar circumstances? Would they appropriate the money with a menace impending over their heads? I answer no, never. But it would be no menace, if, after Congress had twice refused to vote an appropriation to carry a treaty into effect, a foreign government, in the spirit of candor, in language mild and courteous, such as that used by the President, were to inform us they could not abandon their rights, and, however painful it might be, they should be compelled, by a sense of duty, to assert them by force.

Mr. B. concluded by saying he felt it due to himself thus to explain the vote which he intended to give.

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Mr. Leigh resumed, by saying that he could perceive no, or very little difference between the propositions of the Senators from Kentucky and Georgia, (Mr. Clay and Mr. King,) if any, it was trifling, and of the two, he preferred that of the former gentleman. Both, however, came exactly up to his (Mr. L.'s)

idea of what was wise, politic, and just, for the United States, and respectful towards France. They had been told by the gentleman from Pennsylvania that he was well satisfied the true mode of negotiation with France would be to indicate distinctly, that unless she did justice, we would take the matter into our own hands, and seek that redress which she ought to grant.

Mr. Buchanan explained. There was a period when negotiation must cease, and one or the other alternative must be adopted.

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Mr. Clay rose again, he said, not to prolong the discussion. He wished to acknowledge the commendation of the report, made by the honorable Senator. (Mr. Buchanan.) He would not now attempt to defend the errors mentioned by the gentleman, but at some future time he hoped to be able to establish anything advanced in the report.

Mr. Buchanan said, he did not pretend to measure himself with the eloquent gentleman from Kentucky. But he was so well convinced of the truth and justice of the remarks in regard to the report, that he would not shrink from a contest, even with the distinguished Senator himself, rather than abandon the opinion he had formed.

REMARKS, FEBRUARY 6, 1835,

ON THE POST OFFICE BILL.[1]

Mr. Buchanan said, I do not rise to extend this debate; on the contrary, if it may be permitted of so young a member of the Senate to express such an opinion, I think it has been already too much prolonged. What have we before us? We have a bill reported by the Committee on the Post Office, almost unanimously; a bill, the several provisions of which are indispensable to the proper management of this Department of the Government; a bill correcting the astonishing anomaly which has heretofore existed in it—that the same hands shall pay out the public money which receive it. The only correct check which can be

[1] Register of Debates, 23 Cong. 2 Sess. XI., part 1, pp. 343–344. Less formally reported in Cong. Globe, 23 Cong. 2 Sess. II. 206–207.

put on that Department, is to make the officers who receive the public money entirely distinct from those who pay it out. Now, he was very anxious for the adoption of this measure. The session is rapidly drawing to a close, and unless we can send this bill, in the course of a short time, to the House of Representatives, there is no chance, no hope, of its adoption at the present session. So far, therefore, as my humble influence will go, I am prepared to take up this bill as a public measure, and discuss it on its principles, without going into a debate as to the abuses which are said to exist in the Post Office. There is no necessity for such a discussion.

The honorable Senator from Connecticut [Mr. Smith] has introduced a resolution on which, when it shall come up, war may be made on one side, and war may be repelled on the other. This, I humbly apprehend, is not the occasion for a discussion. But, again, I am opposed to entering into a general discussion for another reason. When the reports of the majority and minority of the committee were presented and read here the other day, we presented the appearance of a "Sleepy Hollow;" for, as far as I could judge, no Senator present was paying that attention to them which their merits and importance deserved. I plead guilty myself; I knew that I could not understand them in detail from hearing them read, and I determined to wait until I could see them in print. I feel, therefore, quite unprepared to express an opinion on the subject at this time. So soon as I can get the reports, I will lay aside all other business in order to examine them carefully, and make up an opinion, which I shall express, on the proper occasion, most fearlessly and candidly. Now, there is another reason why we should be in possession of the reports before going into a discussion of the subject. It appears that, as to most of the facts connected with the late investigation, both committees agree, although they have drawn very different inferences from them. Each transaction must then depend upon a careful and minute attention to all the circumstances attending it. It is impossible to make such an examination until we have the reports in print before us. Without, therefore, saying any thing further, I trust that we may go on and pass this bill, debating it, however, so far as regards its own merits, and leave the other subject to another occasion. Before I sit down I would suggest to the gentleman from Ohio [Mr. Ewing] the propriety of embracing in this bill those debts due to the small contractors prior to January, 1834, as they are admitted to be due. They

have been long owing, and surely he cannot be afraid to trust the commissioner of the Department under this act, and the Secretary of the Treasury, with the settlement of these claims.

REMARKS, FEBRUARY 10, 1835,

ON THE SALARIES OF CUSTOM HOUSE OFFICERS.[1]

Mr. Buchanan said he would vote for the amendment. But while he was up, he would make one or two general observations with regard to this bill. It must be admitted that there was no Government on the globe that had collected its revenue with more punctuality or more faithfully than the Government of the United States. To collect it successfully, required the exercise of great care, and the possession of great practical knowledge ourselves, or the advantage of it in others. The objection to the bill was not that the higher officers intrusted with the duty of collecting the revenue, were not sufficiently provided for; but when we went from the ports on the seaboard to those in the interior, he entertained doubts on the subject. We all knew what corruption existed among the European Governments among the collectors of their revenues; and the reason was, that they did not receive a sufficient compensation for their services to live on. They must live; and in order to live, they became corrupt. Although he was as anxious for an economical administration of the Government, and economical expenditures, as any gentleman of the Senate, yet he would be sorry to introduce the spirit of economy to such an extreme as would induce the collectors of the revenue to become dishonest. As the honorable gentleman from Kentucky, (Mr. Bibb.) well remarked, they must live, and if they could not live honestly, they must derive the means of living from some source. He did not know that there were any provisions in this bill, which would have the effect of making all officers dishonest. But he felt certain that at the port of Sandusky, a competent officer could not be obtained for $400, or if he could be obtained, he could not live on that salary. At some other time, it was probable he might move to postpone this bill for the present session—he believed it

[1] Cong. Globe, 23 Cong. 2 Sess. II. 224.

was not to take effect till next January, and at the next session we should all come better prepared to legislate upon a measure which would have so important a bearing upon the collection of the revenue of the country. Mr. B. said no man valued the practical knowledge of the honorable gentleman from Massachusetts, (Mr. Silsbee,) or appreciated it more highly than he did, but he hoped the bill would be postponed, although he would not make a motion to that effect, unless he thought it would receive the sanction of a considerable portion of this body.

Mr. Silsbee said, the Secretary of the Treasury had given him his opinion as to what these collectors ought to have, and he supposed he had founded his estimates upon what he believed to be just and reasonable. Mr. S. said he would be the last man to give less compensation than these officers ought to have, or what was necessary to support them. If the man had lived heretofore on $400, he did not know why he might not continue to do so.

Mr. Buchanan would only say that he would take the opinion of the honorable gentleman from Massachusetts respecting the sufficiency of the salary of this collector, with as little hesitation as that of the Secretary of the Treasury.—But if this honest man, as he had been represented to be, had lived for so many years upon a salary of $400, he thought it was now time to give him six hundred.

REMARKS, FEBRUARY 11, 1835,

ON THE REPAIR OF THE CUMBERLAND ROAD.[1]

Mr. Buchanan said that reasons both of a public and personal character would induce him to make some remarks on this bill. The Cumberland road had been a constant subject before Congress, ever since he had first taken his seat in the House of Representatives, in the session of 1821–'2. A bill had passed at that session to keep it in repair, by erecting toll-gates upon it, under the authority of the general Government, on which Mr. Monroe, then the President of the United States, had placed his veto, because, in his opinion, Congress did not possess the power, under the constitution, to enact such a law. He (Mr. B.) had

[1] Register of Debates, 23 Cong. 2 Sess. XI., part 1, pp. 400–402, 405–406, 411–412. Also reported in Cong. Globe, 23 Cong. 2 Sess. II. 227–228, 228–229.

then carefully examined the message of Mr. Monroe on returning this bill, and had been convinced that we had no power to pass any such act. From that moment he had steadily and uniformly, in every shape and form, opposed the erection of toll-gates upon this road, under the authority of the general Government. If Congress do possess the power to enter the territory of a State, to interfere in their domestic concerns, to erect toll-gates upon their roads, to establish a system of police over them, and inflict penalties for its violations, and of consequence to create tribunals before which these offences may be tried, then every barrier between federal and State authority is at once prostrated. Indeed, this principle would lead to perfect consolidation, so far as an entire jurisdiction over the post roads of the country, for the purpose of levying tolls to keep them in repair, could extend.

In this state of things, there was one party in Congress who, although anxious for the preservation of the road, felt themselves bound to vote against all appropriations for its repair, on the principle of thus compelling its friends to consent that tolls for this purpose should be levied under the authority of the States through which it passes. Another party desired that it might be for ever kept in repair by appropriations from the national treasury, without the collection of tolls, either under State or national authority. And a third class of politicians were determined to push the doctrine of internal improvements to the dangerous extent of establishing the principle that Congress not only possessed the power to appropriate money for the construction of roads and canals, but that they were also bound to assume a jurisdiction over them, by erecting gates upon them, and demanding toll from the passengers.

In regard to myself, said Mr. B., I have been more misrepresented upon this question than I have ever been on any other. I have been constantly denounced as an enemy to the road, although I have never entertained a single hostile feeling towards it. Jealousy towards this great national work, because it might injure the Pennsylvania turnpike, has always been imputed to me, when, if I know myself, I am incapable of such a feeling towards such an improvement, so beneficial to the citizens of the country generally. For several years I voted for appropriations to repair the road, and I did not cease to do so until I discovered that, if this course were continued, the peculiar friends of the road never would consent to the erection of toll-gates under State authority.

In this conflict of jarring opinions, the necessary appropria-

tions could not be obtained for the repairs of the road. It got into a ruinous state, and became so dilapidated that its entire destruction was threatened. Its friends at length consented that it should be placed under the protection of the States through which it passes. To carry their wishes into effect, Pennsylvania, in April, 1831, and Maryland, in January, 1832, passed acts authorizing the erection of toll-gates upon it, and agreed to take it under their care, provided, it "should be put in a good and complete state of repair" by Congress. Virginia, some time afterwards, passed a similar act.

On the 3d July, 1832, Congress approved of these legislative acts, and appropriated $150,000 towards the repair of the road. Here, then, was a contract expressly and solemnly made, first, that the road should be put in good and complete repair by Congress, and then that it should be surrendered to the States for the purpose of its preservation. In pursuance of this arrangement the Engineer department adopted a plan for its repair. The road was to be Macadamized. There were to be three strata of stone placed upon it, each of three inches in depth. The repairs proceeded upon this principle. On the 2d March, 1833, the sum of $125,000 more was appropriated to continue these repairs. At the last session an estimate was presented to Congress by the Engineer department, stating that the sum of $652,100 would be required to complete the road; but Congress only appropriated $300,000 for this purpose, less than half the necessary sum. The act granting this money also declared that it was given for the "entire completion of the repairs of the Cumberland road east of the Ohio."

What have been the consequences? Just such as might have been foreseen by every reflecting man. The Engineer department had adopted a fixed plan for repairing the road. This plan they had steadily pursued for two years. It was known or ought to have been known by Congress. They were progressing gradually to complete the road, when, all of a sudden, without any previous notice, Congress changed the plan, by granting less than half the money necessary for its execution. What was then to be done? It became necessary for the engineer to abandon his system, and spread the appropriation over the whole road. He has acted thus; and the result has been, that about sixty-three miles of the road, nearly half its whole length, has but one stratum of three inches of stone in depth, instead of three. Is there any

gentleman upon this floor who does not know not only that this is insufficient for a permanent road, but that as soon as the spring opens it will be cut to pieces by the heavy wagons and carriages? The metal, as it is technically called, will then be all in the mud. If the money now asked be not granted, the fatality which has always attended this road will continue to exist, and the last appropriation of $300,000 will be rendered nearly useless.

But, sir, the States through which the road passes have only agreed to take it off your hands, on the condition that you shall first put it in good and complete repair, and you have accepted these terms. Does any gentleman suppose for a single moment that the State of Pennsylvania will accept this road in its present condition? Is it in good and complete repair, according to the terms of the contract? Your own engineer answers no, and informs you that it will require the sum of $346,186 58 to complete the repairs, according to the plan adopted, and which is considered indispensable. This sum you will be obliged to grant, or you must keep the road in repair by annual appropriations—a course of policy which I presume no Senator intends to adopt as a permanent system. There is no other alternative, unless you devote the road itself to destruction. This idea no gentleman can for a moment entertain. Toll-gates to be erected by Congress are now out of the question.

But it is said that the sum of $300,000 was appropriated at the last session, for the entire completion of the repairs of the road, and that no more ought now to be demanded. Is there any force in this argument? In adjusting an account with individuals, where the claimant is an opposing party, it is very proper for Congress to declare that the sum granted shall be in full of all demands. Unless under very extraordinary circumstances, I should not vote to reopen such an account, and grant an additional sum. But what are the facts upon the present occasion? Does not this road belong to the United States? Are we not bound by the strongest sense of public duty to keep it in repair? Here there is no opposite party with whom we can drive a bargain. It is our own road, and if we have not appropriated a sufficient sum for its repair, shall we suffer it to go to ruin because we have made a mistake in regard to the amount necessary for that purpose? If the simple declaration of Congress that $300,000 was sufficient could have rendered it so, then there might be justice in the reasoning; otherwise it is a mere fallacy.

After having granted a certain sum, which was found by experience to be wholly insufficient to complete one of our fortifications, what should we say to a gentleman who would gravely contend that, as we had declared this sum should accomplish the object, we would rather permit it to go to ruin than appropriate another dollar? The cases are precisely parallel. But this is not all. How can Congress acquit themselves from their obligations to Maryland, Pennsylvania, and Virginia, by such an argument? They have a right to declare that this was not the bargain; that you agreed to repair the road; and, cost what it may, this object must be accomplished, or they will not accept its surrender.

The commissioners appointed under the act of the Legislature of Pennsylvania have pledged themselves to us in the most solemn manner to accept the road, and erect toll-gates upon it, as soon as Congress shall appropriate the sum deemed necessary by the Engineer department to place it in a state of good repair. That sum is granted by this bill. Pass it, and I will undertake to say for Pennsylvania that this perplexing question, which has so often and for so many years agitated Congress, will be for ever at rest. You will never more hear of this road, unless it be that it has been protected and preserved with the fostering care which that State exercises over all interests in which the welfare of her own citizens or those of the United States is concerned.

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Mr. Buchanan said that he had but a few words to say. He did not know to whom the gentleman from South Carolina [Mr. Preston] alluded in the first part of his remarks; certainly it could not be to him. (Mr. B.) Whether the Senator had, since the year 1821, seen any new lights himself, he did not know. But for himself, since the session of 1822–'3, he (Mr. B.) had been uniformly consistent, in season, and almost out of season, in endeavoring to destroy, and, so far as his humble influence went, to explode for ever the dangerous doctrine in regard to the establishment of toll-gates throughout the Union, under the authority of Congress.

[Here Mr. Preston made a remark in an under tone, the purport of which did not reach the reporter.]

Mr. B. continued. He had, with others, opposed appropriations for the repair of this very road, in order that the friends

of it might be compelled to go to the States for the purpose of having toll-gates erected under their authority.

But he did not think the honorable Senator had read the documents with his accustomed care. What was asked now? He put it to that gentleman whether the State of South Carolina, occupying the high station she had always done, and which he trusted Pennsylvania always had done, and ever would do, whether, under similar circumstances, she would take the road under her charge, and undertake for ever to keep it in repair, when it was now in such a condition that it must go to ruin in the course of a year, unless an appropriation were made. That was the opinion of all the engineers on the subject. The fact was, and if the gentleman had examined the documents he would have discovered it, that on more than sixty miles of the road there were but three inches of metal in depth. Now, it did not require much sagacity to perceive that, upon the opening of the spring, when heavy wagons and other vehicles passed over this part of the road, they must get into the mud; and the stones and other ingredients of which it was composed must become so mixed up together as to render it almost impassable. In less than six months this would be the case, should no appropriation be made at this session to complete the repairs. But Pennsylvania had relied on the estimate of the Engineer department; she did so still. And could she be asked to take the road, when the officers of this Government had declared that it was not in repair, and could not be put in repair without an additional appropriation? Would the gentleman ask Pennsylvania to do so? Did he not always do unto others as he would wish to be done by? Would he ask her to incur an obligation of that kind, when she could not discharge the duties arising out of the obligation? Why, six hundred and odd thousand dollars were asked for at the last session. If that sum had been granted then, the Senate would never more have heard of the road. The mere balance of the sum contained in the bill that had passed the Senate at the last session, and which was reduced by the House of Representatives to $300,000, was all that was now asked for. And, so far as he could give the gentleman a pledge, in his place on that floor, he would promise that the sum which the engineers had demanded as necessary to put the road in repair, if granted, should be the last he would ever ask for, being determined never to vote again for another dollar on that account.

[Here Mr. B. read an extract from the memorial of the

commissioners appointed under an act of the Legislature of Pennsylvania to accept a surrender of the Cumberland road, and erect toll-gates upon it, in which they pledge themselves that so soon as Congress shall make the appropriation for the completion of the road, (not after the appropriation shall be expended, said Mr. B.,) according to the estimate of the Department, toll-gates shall be erected without delay.]

Mr. B. resumed. That road would be accepted immediately on the passage of this act, because it provided for the sum estimated by the department, and the commissioners deemed it sufficient, and were willing to act on that belief. Supposing the gentleman had given his agent $1,000, to repair his house, and it was afterwards found insufficient, and that unless more money were expended on the building, it must fall into ruins, would he be willing to suffer the loss, rather than lay out more money in repairs? And that was precisely the case here. Well, then, they must repair the road now, or let it go to ruin, which he supposed no one contemplated, or they must be prepared to grant more money at the next session.

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Mr. Buchanan said he did not rise for the purpose of again adverting to the merits of the proposed appropriation, but merely to make a few remarks in reply to the Senator from Kentucky, [Mr. Clay.] He (Mr. B.) had got between two fires, from what he considered opposite extremes. Whilst the gentleman from South Carolina [Mr. Preston] thought he went too far in favor of internal improvement, the gentleman from Kentucky [Mr. Clay] blamed him for not going far enough. On this subject they were the two extremes; and he should adopt for the rule of his conduct the maxim "*in medio tutissimus ibis.*" The true course, in his opinion, was midway between them.

Mr. B. said that if the present were a proper occasion to enter into the argument, he thought he could prove most conclusively that there was a vast difference between the power of simply appropriating money for the construction of roads, and that of exercising jurisdiction over them after they are completed. The one was the mere application of the funds of the Government to accomplish a particular object, whilst the other invaded the jurisdiction of the States, and entered upon their soil, for the purpose of erecting toll-gates upon these roads, and levying toll from passengers. To carry this power into effect it would be

necessary to establish officers along these roads under the authority of the United States. He considered the assumption of jurisdiction over the soil a much higher power than the mere appropriation of money. What, he asked, would be the argument to establish this jurisdiction? Congress possess the power to appropriate money for the construction of post roads; and therefore it follows that they may take these roads under their own jurisdiction for the purpose of preserving them, may erect toll-gates upon them, and enact the laws necessary to carry these powers into execution. An incidental power cannot transcend its principal: the stream cannot rise higher than its fountain; and, even admitting the power of Congress to make internal improvements, he utterly denied the power of erecting toll-gates upon them, and thus exercising jurisdiction over them. He would merely observe, in relation to a remark of the gentleman, [Mr. Clay,] that if whole masses—whole communities—had changed their opinions in regard to particular subjects, for himself he could say he was not among the number of those who had thus changed. But if this were the proper time to enter into such a discussion, he thought he could show that sufficient reasons existed to justify the change of whole communities on the important question to which the gentleman had evidently alluded.

Mr. B. said that he had made these remarks with the most perfect respect for that gentleman. Towards him he had never entertained any other feeling. He (Mr. B.) had said thus much in his own defence. He could not sit and listen in silent acquiescence to the observations which had been made by that gentleman in the course of his remarks.

SPEECH, FEBRUARY 17, 1835,

ON THE REMOVAL OF EXECUTIVE OFFICERS.[1]

Mr. Buchanan said it was with extreme diffidence and reluctance that he rose to address the Senate on the present occasion. It was my intention (said he) to suffer this bill to pass, contenting

[1] Register of Debates, 23 Cong. 2 Sess. XI., part 1, pp. 495–503; Curtis's Buchanan, I. 281–291.

In a debate on the same subject, February 14, 1835, the following colloquy took place:

Mr. Buchanan. I am exceedingly sorry, Mr. President, that the Senator

myself with a simple vote in the negative. This course I should have pursued, had the constitutional question been fully discussed by any gentleman on our side of the House. As this has not been done, I feel it to be a duty which I owe to those who sent me here, as well as to myself, to express my opinion on the subject, and the reasons on which that opinion is founded.

The present bill presents a most important question concerning our fundamental institutions. It attacks a construction of the constitution of the United States which has been considered settled for almost half a century. Has the President, under the constitution, the power of removing executive officers? If any question can ever be put at rest in this country, this, emphatically, ought to be considered that one. It was solemnly settled in 1789, by the first Congress of the United States. Of whom was that Congress composed? Of the men who had sustained the toils and dangers of the revolutionary war—of the men who sat in the convention which framed the constitution, and who passed from that convention into the first Congress. These men, who laid the foundations of our Republic broad and deep, most solemnly and deliberately decided that to the President, and to him alone, belonged the power of removal. This was not a moment when the country was convulsed by party spirit. Very far from it. The fathers of the Republic were then occupied in putting the Government in motion, and in establishing such

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from Kentucky [Mr. Clay] appears to be disposed so often to pay his compliments to myself.

Mr. Clay. I had no allusion to the Senator from Pennsylvania when I referred to the leaders of the administration party.

Mr. Buchanan. When the gentleman spoke of the leaders of the administration party, he looked at me, and I understood him as alluding to me, or I thought he did.

Mr. Clay. I assure the gentleman I had no allusion to him whatever. I might look at him, as he looks at me sometimes; but I think at the time I spoke of the leaders of a particular party, I was looking rather to the Senator from New York [Mr. Wright] than to him.

Mr. Buchanan. Without going further into the question of whom the gentleman referred to in his remarks, I will simply state that, whenever he thinks proper to take up the subject, and attempt to prove that the practice under which this Government has flourished, and which was sustained by Madison, is not founded in reason and justice, is not necessary for the proper administration of the Government, and is not consistent with the constitution, then I will be ready to meet him.

Mr. Clay. We shall meet, then, at Philippi (Register of Debates, 23 Cong. 2 Sess. XI., part 1, p. 455.)

principles as might preserve the liberties and promote the best interests of the American people for ages. In what condition are we, at the present moment, to rejudge the judgment of these men, and reverse their solemn decision? Is not party spirit raging throughout the land? Are there not high party feelings in this body? Are we in a condition calmly and deliberately, without prejudice and without passion, to review and to condemn their judgment?

Why, sir, even if there were no authority in the constitution for the power of removal, the decision of this body, at this time, would have but little influence among the people. They would compare the calmness, the self-possession, the freedom from political excitement, of the sages who established the precedent, with the party violence and the high political feeling of the Senate at the present day; and the weight of authority would be all against us.

The debate in the first Congress was very long and very able. Every argument which patriotism and ingenuity could suggest was exhausted. The question was at length decided in the House of Representatives on the 22d June, 1789. On the yeas and nays, thirty voted in the affirmance of the President's power of removal, and eighteen against it—a large majority, considering the comparatively small number of which the House was then composed.

The question arose on the bill to establish the Department of Foreign Affairs. It contained a clause declaring the Secretary of State "to be removable from office by the President of the United States." From this clause it might have been inferred that the power of removal was intended to be conferred upon the President by Congress, and not acknowledged to exist in him under the constitution. To remove every difficulty—to place doubt at defiance in all future time—the words "to be removable from office by the President of the United States" were stricken from the bill, and this right was expressly acknowledged to exist independently of all legislation. By the second section of the bill, which became a law on the 27th July, 1789, it is declared that "the chief clerk in the Department of Foreign Affairs, whenever the principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers, appertaining to the said Department." Here, then, is a clear, strong, distinct recognition,

by the House of Representatives, of the President's power of removal, not by virtue of law, but under the constitution. This phraseology was carefully adopted for the purpose of putting this very question at rest forever, so far as Congress could effect this purpose.

The bill, having passed the House of Representatives, was sent to the Senate for their concurrence. The power of removal was there solemnly considered. This was the very body which, according to the doctrine of gentlemen, has a right to control this power; and yet they affirmed the principle that it was vested in the President, and in him alone. It is true that the question was determined by the casting vote of Mr. Adams, then the Vice President: but the act was approved by General Washington, and the power has ever since been exercised without dispute by him and his successors in office, until after the election of the present President. Washington, the elder Adams, Jefferson, Madison, Monroe, and the younger Adams, removed whom they pleased from office; but, after the accession of Jackson, the existence of this power is denied. We are now required to believe that all which former Presidents have done was wrong; that the first Congress were entirely mistaken in their construction of the constitution; and that the President does not possess the power of removal, except with the concurrence of the Senate.

If ever a question has occurred in the history of any country, which ought to be considered settled, this is that one. A solemn decision at first, adopted in practice afterwards by all branches of the Government, for five-and-forty years, makes the precedent one of almost irresistible force.

What, then, have we a right to expect on our side of the House from the opposition? Not merely that they shall prove it to be a doubtful question, but that they shall present a case so clear as to render it manifest that all which has been done has been without authority, and all the removals which have ever been made have been in violation of the constitution. The burden rests entirely upon the gentlemen, and a ponderous load they have to sustain.

But, sir, if the question were entirely new, if it never had been decided either by precedent or by practice, I think it may be made abundantly clear that the strength of the argument is greatly on the side of those who maintain the power.

What is the nature of the constitution of the United States? The powers which it devolves upon the Government are divided

into three distinct classes, the legislative, the executive, and the judicial. To preserve the liberties of any country, it is necessary that these three branches of Government should be kept distinct and separate as far as possible. When they are all united in the same person, this is the very definition of despotism. As you approximate to this state of things, in the same proportion you advance towards arbitrary power. These are axioms which cannot, which will not, be denied.

Doubtless, for wise purposes, the framers of our constitution have, in a very few excepted cases, blended these powers together. The Executive, by his veto, has a control over our legislation. The Senate, although a branch of the Legislature, exercises judicial power in cases of impeachment. The President nominates, "and, by and with the advice and consent of the Senate," appoints all officers, except those of an inferior nature, the appointment of which may be vested by Congress "in the President alone, in the courts of law, or in the heads of Departments."

Now, sir, my position is, that when the constitution of the United States, in a special case, has conferred upon the Senate, which is essentially a branch of the Legislature, a participation in executive power, you cannot by construction extend this power beyond the plain terms of the grant. It is an exception from the general rule pervading the whole instrument. Appointment to office is, in the strictest sense, an executive power. But it is expressly declared that the assent of the Senate shall be necessary to the exercise of this power on the part of the President. The grant to the Senate is special. In this particular case, it is an abstraction from the general executive powers granted under the constitution to the President. According to the maxim of the common law, *expressio unius est exclusio alterius*—it follows conclusively that what has not been given is withheld, and remains in that branch of the Government which is the appropriate depository of executive power. The exception proves the rule. And the grant of executive power to the Senate is confined to appointments to office, and to them alone. This necessarily excludes other executive powers. It cannot, therefore, be contended, with any force, as the gentleman from Massachusetts [Mr. Webster] has contended, that because the consent of the Senate is made necessary by the constitution to appointments of officers, that therefore, by implication, it is necessary for their removal. Besides, these two things are very distinct in their nature, as I shall hereafter have occasion to demonstrate.

But to proceed with the argument. I shall contend that the sole power of removing executive officers is vested in the President by the constitution. First, from a correct construction of the instrument itself; and, second, even if that were doubtful, from the great danger resulting to the public interest from any other construction.

The constitution declares, in express language, that "the executive power shall be vested in a President of the United States." Under these general terms I shall, once for all, disclaim the idea of attempting to derive any portion of the power of the Chief Magistrate from any other fountain than the constitution itself. I therefore entirely repel the imputation, so far as I am concerned, which would invest him with executive powers derived from the prerogatives of the Kings or the Emperors of the old world. Such arguments are entirely out of the question.

The constitution also declares that "he shall take care that the laws be faithfully executed." These two clauses of the constitution confer the executive power on the President, and define his duties. Is, then, the removal from office an executive power? If it be so, there is an end of the question; because the constitution nowhere declares that the Senate, or any other human tribunal, shall participate in the exercise of this power. It will not be contended but that the power of removal exists, and must exist, somewhere. Where else can it exist but in the Executive, on whom the constitution imposes the obligation of taking care that the laws shall be faithfully executed? It will not be pretended that the power of removal is either of a legislative or judicial character. From its very nature it belongs to the Executive. In case he discovers that an officer is violating his trust—that, instead of executing the laws, his conduct is in direct opposition to their requisition—is it not, strictly speaking, an executive power to arrest him in his career, by removing him from office? How could the President execute the trust confided to him, if he were destitute of this authority? If he possessed it not, he would be compelled to witness the executive officers violating the laws of Congress, without the power of preventing it.

On this subject it is impossible for me to advance any thing new. It was exhausted by Mr. Madison, in the debate of 1789, in the House of Representatives. I am confident the Senate will indulge me whilst I read two extracts from his speeches on that occasion, delivered on the 16th and 17th June, 1789. The first was delivered on the 16th June, 1789, and is as follows:

"By a strict examination of the constitution, on what appears to be its true principles, and considering the great departments of the Government in the relation they have to each other, I have my doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article it is said that all legislative powers herein granted shall be vested in a Congress of the United States. In the second article it is affirmed that the executive power shall be vested in a President of the United States of America. In the third article it is declared that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish.

"I suppose it will be readily admitted that, so far as the constitution has separated the powers of these great departments, it would be improper to combine them together; and, so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the constitution. The legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other department, except the constitution has qualified it otherwise. The constitution has qualified the legislative power, by authorizing the President to object to any act it may pass, requiring, in this case, two-thirds of both Houses to concur in making a law; but still the absolute legislative power is vested in Congress with this qualification alone.

"The constitution affirms that the executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The constitution says that, in appointing to office, the Senate shall be associated with the President, unless, in case of inferior officers, when the laws shall otherwise direct. Have we a right to extend this exception? I believe not. If the constitution has vested all executive power in the President, I venture to assert that the Legislature has no right to diminish or modify his executive authority."

Again:

"The doctrine, however, which seems to stand most in opposition to the principles I contend for, is, that the power to annul an appointment is, in the nature of things, incidental to the power which makes the appointment. I agree that, if nothing more was said in the constitution than that the President, by and with the advice and consent of the Senate, should appoint

to office, there would be great force in saying that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the constitution, no less explicit than the one on which the gentleman's doctrine is founded: it is that part which declares that the executive power shall be vested in a President of the United States.

"The association of the Senate with the President in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is another part of the constitution which inclines, in my judgment, to favor the construction I put upon it. The President is required to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the Executive Magistrate, it would seem that it was generally intended he should have that species of power which is necessary to accomplish that end. Now, if the officer, when once appointed, is not to depend upon the President for his official existence, but upon a distinct body, (for where there are two negatives required, either can prevent the removal,) I confess I do not see how the President can take care that the laws be faithfully executed. It is true, by a circuitous operation, he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the Senate for the purpose of displacing an officer; but would this give that species of control to the Executive Magistrate which seems to be required by the constitution? I own, if my opinion was not contrary to that entertained by what I suppose to be the minority on this question, I should be doubtful of being mistaken, when I discovered how inconsistent that construction would make the constitution with itself. I can hardly bring myself to imagine the wisdom of the convention who framed the constitution contemplated such incongruity."

But, sir, if doubts could arise on the language of the constitution itself, then it would become proper, for the purpose of ascertaining the true meaning of the instrument, to resort to arguments *ab inconvenienti*. The framers of the constitution never intended it to mean what would be absurd, or what would defeat the very purposes which it was intended to accomplish. I think I can prove that to deprive the President of the power of removal would be fatal to the best interests of the country.

And, first, the Senate cannot always be in session. I thank

Heaven for that. We must separate and attend to our ordinary business. It is necessary for a healthy political constitution that we should breathe the fresh and pure air of the country. The political excitement would rise too high if it were not cooled off in this manner. The American people never will consent, and never ought to consent, that our sessions shall become perpetual. The framers of the constitution never intended that this should be the case. But once establish the principle that the Senate must consent to removals, as well as to appointments, and this consequence is inevitable. A foreign minister in a remote part of the world is pursuing a course dangerous to the best interests, and ruinous to the character, of the country. He is disgracing us abroad, and endangering the public peace. He has been intrusted with an important negotiation, and is betraying his trust. He has become corrupt, or is entirely incompetent. This information arrives at Washington, three or four days after the adjournment of Congress on the 3d of March. What is to be done? Is the President to be entirely powerless until the succeeding December, when the Senate may meet again? Shall he be obliged to wait until the mischief is entirely consummated—until the country is ruined—before he can recall the corrupt or wicked minister? Or will any gentleman contend that, upon every occasion, when a removal from office becomes necessary, he shall call the Senators from their homes throughout this widely extended Republic? And yet, this is the inevitable consequence of the position contended for by gentlemen. Could the framers of the constitution ever have intended such an absurdity? This argument was also adverted to by Mr. Madison.

But again, there are great numbers of disbursing officers scattered over this Union. Information is received, during the recess of the Senate, that one of them in Arkansas or at the Rocky mountains has been guilty of peculation, and is wasting the public money. Must the President fold his arms, and suffer him to proceed in his fraudulent course, until the next meeting of the Senate? The truth is, that the President cannot execute the laws of the Union without this power of removal.

But cases still stronger may be presented. The heads of Departments are the confidential advisers of the President. It is chiefly through their agency that he must conduct the great operations of Government. Without a direct control over them, it would be impossible for him to take care that the laws shall

be faithfully executed. Suppose that one of them, during the recess of the Senate, violates his instructions, refuses to hold any intercourse with the President, and pursues a career which he believes to be in opposition to the constitution, the laws, and the best interests of the country. Shall the executive arm be paralyzed; and, in such a case, must he patiently submit to all these evils until the Senate can be convened? In time of war the country might be ruined by a corrupt Secretary of War, before the Senate could be assembled.

It is not my intention on this occasion to discuss the question of the removal of the deposites from the Bank of the United States. I merely wish to present it as a forcible illustration of my argument. Suppose the late Secretary of the Treasury had determined to remove the deposites, and the President had believed this measure would be as ruinous to the country as the friends of the bank apprehended. If the Secretary, notwithstanding the remonstrances of the President, had proceeded to issue the order for their removal, what should we have heard from those who were loudest in their denunciations against the Executive, if he had said, my arms are tied, I have no power to arrest the act; the deposites must be removed, because I cannot remove my Secretary? Here the evil would have been done before the Senate could possibly have been assembled. I am indebted to the speech of the Senator from South Carolina, [Mr. Calhoun] at the last session, for this illustration. The truth is, view the subject in any light you may, the power of removal is in its nature inseparable from the executive power.

I have been presenting the inconveniences which would arise, during the recess of the Senate, from the want of this power in the Executive. But suppose the Senate to be always in session, would this remove every difficulty? By no means. Confer upon the Senate the power of rejecting removals, and you make the Executive, in the language of the debate of 1789, a double-headed monster. That power on whom is devolved the execution of your laws must be able to remove a corrupt or incompetent agent from office, or he cannot perform his duties. The Senate may, without inconvenience, and with very great advantage to the country, participate in appointments; but, when the man is once in office, the President must necessarily possess the power of turning him out in case he does not perform his duties. This power ought not to depend upon the will of the Senate, for that body have nothing to do with the execution of the laws.

If the power contended for were vested in the Senate, what would be the consequences? Still more dangerous, if possible, than any which I have yet depicted. The cases in which removals are necessary must rapidly increase with the number of our officers and our rapidly extending population. If the President must assign reasons to the Senate for his removals, according to the provisions of this bill, or if the Senate must participate in these removals as well as in appointments, it necessarily follows that these reasons must be investigated. Witnesses must be examined, to ascertain the truth or falsehood of the charges made against the officer sought to be removed. The case must be tried judicially. Time must be consumed, to the prejudice of our other duties. The legislative functions of the Senate must thus become impaired, and feelings [be] excited between co-ordinate branches of the Government calculated to produce a most injurious effect upon the country. In this state of things, the case might readily occur which was anticipated by Mr. Madison in 1789. A majority of the Senate might even keep one of the heads of Department in office against the will of the President. Whether they would have done so or not last winter, in the case of the Secretary of the Treasury, I shall not pretend to determine.

If this power were conferred upon the Senate, it would interfere with our judicial functions to a dangerous and alarming extent. The removal of a high officer of the Government is recommended by the President to the Senate, because of official misconduct. The charges are tried before the Senate. From the very nature of the question, it must become, in fact, a judicial investigation. The Senate determine, either that he shall remain in his office, or that he shall be removed. In either case, the House of Representatives, possessing the sole power of impeachment under the constitution, determine to exercise it against this officer. But the Senate have, by their previous proceedings, utterly disqualified themselves from giving to the accused an impartial trial. They have already decided upon his guilt or his innocence. Instead of proceeding to the trial unbiased by favor or by prejudice, their minds are inflamed, their judgments are biased, and they come to the investigation with the feelings of partisans rather than those of judges. The House of Representatives would have a just right to complain loudly against the exercise of this power by the Senate. We should thus disqualify

ourselves from judging impartially in cases between the people of the United States and the high officers of the Government.

I think I have successfully established the position that no two things can in their nature be more distinct than the power of appointment and that of removal. If this be the case, then what becomes of the argument of the gentleman from Massachusetts [Mr. Webster.] It rested entirely upon the principle that these two powers were so identical in their nature, that because the Senate, under the constitution, have the express power of advising and consenting to appointments, therefore, by implication, they must possess the power of advising and consenting to removals. The inference is without foundation.

The truth is, that the more we discuss this question, we shall have the greater reason to admire the wisdom of the constitution, and of those enlightened and patriotic men who placed that construction upon it in the beginning, which I shall venture to predict never will be disturbed by the American people. The Senate, from the nature of the body, are fully competent to assist the President in appointments. It would change their character altogether, and paralyze the executive arm of the Government, if they were to usurp the power of interfering in removals from office. Let the constitution, and the construction of it by its founders, in this particular, be perpetual!

It has been objected that the President, by this construction, is too far removed from responsibility in the exercise of this power. But he is responsible to the American people, whose servant he is in this, as in all other cases. Unless you palsy the executive arm, and render it powerless to do good, lest it may do evil, you cannot support the doctrine which has been urged. You must vest some discretion, you must repose some confidence, in the Executive, or the wheels of Government must stand still. Should he abuse his power, he is liable to the censure of public opinion; and, in flagrant cases, he may be impeached.

It was contended in the first Congress, and the same argument has been urged upon the present occasion, that the power of removal was not recognised by the constitution; that it was a case omitted, and that therefore, by implication, it belongs to Congress. This argument was fully met and successfully refuted in 1789. If this principle were established, the executive power would have no necessary control over executive officers. Congress might confer the power of removal upon the Senate alone,

upon the House of Representatives alone, or upon both conjointly, without any participation of the President. This Government—the admiration of the world—would present the solecism of an Executive without any control over executive agents, except what might be granted to him by the Legislature. We are not placed in this unfortunate predicament. The President, under the constitution, has the power of removal. It is a constitutional power, not to be controlled by the Legislature. It is a power equally sovereign in its nature with that of legislation itself. He is a co-ordinate branch of the Government, and has the same right to exercise his discretion in removals from office, that Congress possess in regard to the enactment of laws.

This brings me to consider the constitutionality of the third section of the bill now depending before us. It provides "that in all nominations made by the President to the Senate, to fill vacancies occasioned by removal from office, the fact of the removal shall be stated to the Senate at the time that the nomination is made, with a statement of the reasons for such removal."

Whence do we derive our authority to demand his reasons? If the constitution has conferred upon him the power of removal, as I think I have clearly shown, is it not absolute in its nature, and entirely free from the control of Congress? Is he not as independent in the exercise of this power as Congress in the exercise of any power conferred upon them by the constitution? Would he not have the same authority to demand from us our reasons for rejecting a nomination as we possess to call upon him for his reasons for making a removal? Might he not say, I am answerable to the American people, and to them alone, for the exercise of this power, in the same manner that the Senate is for the exercise of any power conferred upon them by the constitution?

With all the deference which I feel for the opinions of the Senator from Tennessee, [Mr. White,] I think he has arrived at the conclusion that the third section of this bill is constitutional, by blending things together which are in their nature entirely distinct. He asks, is it not in the power of Congress to create the office, to define its duties, and to change and vary these duties at pleasure? Granted. May they not, if they believe the office unnecessary, repeal the law, and must not the officer fall under it? Granted. These are legislative powers, clearly conferred upon Congress by the constitution. It is then asked, may Congress not prescribe it as the duty of these officers to give reasons for

their conduct? Certainly they may. And why? Because they are the creatures of Congress, they are called into existence by Congress, and they will cease to exist at the pleasure of Congress. Is this the condition of the Executive, who is a co-ordinate branch of the Government, and who is answerable for his conduct, not to Congress, but to the people of the United States? What right have we to demand reasons from the servant of another as to how he performs his duties? To his own master, which, in this particular, is the American people, and to them alone, he is responsible. If Congress can command him to give reasons to the Senate for his removals, the Senate may judge of the validity of these reasons, and condemn them if they think proper. The Executive of the country is thus rendered subordinate to the Senate—a position in which the constitution of the country never intended to place him. In my opinion, this bill as strongly negatives the constitutional power of the President to remove from office, without the concurrence of the Senate, as if it were so declared in express language. For this reason I shall vote against it.

REMARKS, FEBRUARY 21, 1835,

ON FRENCH RELATIONS.[1]

Mr. Buchanan said he entirely concurred in the sentiments expressed by the Senator from Massachusetts, [Mr. Webster.] We ought not now to discuss the French question, on the printing of this memorial. We have not yet received any official information from France. All the news we have is derived from the English journals. In this state of the case, is it proper, is it becoming, that the American Senate should commit itself, in any manner, upon the course which may be demanded by the interest and honor of the country? Ought we not to reserve ourselves until all the circumstances attending the late transactions in France may be placed before us in an authentic form?

For his own part, Mr. B. had yet seen nothing to shake the opinion which he had formerly expressed to the Senate, that the only mode of obtaining justice from France was to express our

[1] Register of Debates, 23 Cong. 2 Sess. XI., part 1, p. 576.

determination firmly that justice must be done. He, however, deprecated further debate at this time, and hoped the memorial would be ordered to be printed without further discussion.

The memorials were then laid on the table, and ordered to be printed.

REMARKS, FEBRUARY 23, 1835,

ON A BILL TO AMEND THE JUDICIAL SYSTEM OF THE UNITED STATES.[1]

Mr. Buchanan said, he should not have risen to make any remarks upon the subject; but he believed the propitious moment had at length arrived when justice might be done to the west. The people of the western States had a right to complain, and to complain loudly, that the Circuit Court system had never been extended to them. It must be admitted, however, that their Representatives, in this and the other House, had, in a great degree, been the cause of this injustice. Whilst he had been a member of the House of Representatives, he had exerted all his feeble powers, first under the lead of the gentleman from Massachusetts, (Mr. Webster,) and afterwards as Chairman of the Judiciary Committee, to do justice in this particular to the western States. Every effort had hitherto been in vain, chiefly for want of a cordial and united effort of the western gentlemen themselves.

Although no practical benefit has yet resulted from the repeated discussions of this subject; yet a great and important principle has been settled. At first, many gentlemen whose opinions were entitled to great consideration, thought it best to detach the judges of the Supreme Court from Circuit duties, and convert them into a mere Court of Appeals. He believed that very few, if any, now entertained such an opinion. The truth was, that no man can be a useful judge of the Supreme Court, who has not an opportunity of acquiring a practical knowledge on the circuit of the conflicting and ever varying laws of the different States. It is thus, and thus only, that he can bring with him to Washington and contribute his proportion of that sort of local State law which can never be acquired in any other manner.

[1] Cong. Globe, 23 Cong. 2 Sess. II. 280. The bill proposed so to arrange the judicial circuits as to extend the circuit court system to the Western States.

The judges of a mere appellate tribunal never could and never would acquire by study alone, a sufficient knowledge of twenty-four distinct and clashing systems of the State laws and customs.

It has then been established, that our present judicial system shall not be abandoned. This being the case, no man can doubt but that it must be extended to the six western States. Nature herself has clearly divided these States into two circuits. The three Southwestern States, Alabama, Mississippi, and Louisiana, ought to form one circuit; and the three Northwestern States, Indiana, Illinois, and Missouri, the other. Before he sat down he should make a motion to recommit the bill to the Judiciary Committee, with instructions to create those two circuits.

Mr. B. believed that the circuit as proposed by the bill under consideration was far too extensive. It was possible indeed that the Judge might be able to travel over it, though the places of holding the courts were very remote from each other. But was there nothing more necessary? The Judge must acquire an accurate knowledge of the laws of each of the States within his circuit. This was a work of time and of labor. Every State in the Union had its own system of laws; and these were constantly changing, according to the will of twenty-four distinct Legislatures. If a Judge were to be kept constantly on the road, he could never acquire the knowledge necessary to make him useful to the country. The proposed circuit was greatly too large. He would again repeat, that nature had already formed the two circuits in the West, which he should propose to establish. Alabama, Mississippi, and Louisiana, were not more closely connected by their position, than they were in feeling and in interest. The same might be said of Indiana, Illinois, and Missouri. He trusted the time had now arrived when these circuits might be formed. In order to try the sense of the Senate upon the subject, he now moved,

"That the bill be recommitted to the Committee on the Judiciary, with instructions to amend the bill, to create two new circuits, the one to consist of the States of Louisiana, Alabama, and Mississippi, and the other of the States of Indiana, Illinois, and Missouri."

REMARKS, FEBRUARY 26, 1835,

ON PUBLIC DEPOSITS IN BANKS.[1]

Mr. Buchanan said he intended to vote against the engrossment of this bill; and that there might be no misconstruction of his reasons for this determination, he would state distinctly the sole cause why he could not give it his support.

The bill, in his opinion, had been greatly improved by the amendments which had been adopted. He was opposed to investing the Treasury Department with any discretion in regard to the deposite banks which was not absolutely necessary. Their duties should be as far as possible distinctly defined by law. This we owed not only to the Department itself, but to the country. The amendments had, in several important particulars, accomplished this purpose—they had, in a great degree, supplied the defects in the original bill.

Why then, it might be asked, should he vote against it? His answer was simply, because it required these banks to pay two per cent. interest on the deposites. Now it might be, and probably was true, that the banks in the middle and eastern States would be able to bear this burthen. But what was the case in the Southwestern States? In that portion of the Union, the Government received large sums of money which must be deposited in their local banks. There was a constant drain upon these banks to supply the funds necessary to be expended by the Government in the middle and eastern cities. This caused the rate of exchange to be always against New Orleans, and that portion of the Union. Under this bill it was made the duty of the Deposite Banks to transfer the funds of the Government to any point, where it became necessary to expend them. This duty they ought to perform. Mr. B. felt confident, however, both from the nature of the business and the information he had received from gentlemen of the South and the West, that their banks would not be able to bear the charge of transferring these funds, and also pay interest upon the deposites at the rate of two per cent. The inevitable consequence would be, that the Government could not, in that portion of the Union, get sound and solvent banks to accept the deposites upon the terms prescribed by this bill. The Treasury Department would thus be em-

[1] Cong. Globe, 23 Cong. 2 Sess. II. 297–298.

barrassed in its operations, and heavy eventual losses might be sustained by the United States. Surely, said Mr. B. if two per cent. interest on the deposites be enough to demand from the banks at New York or Boston, it is too much to exact from those at New Orleans. There is no equality, there is no justice in subjecting them to the same charge. Whilst the one class of banks must be constantly transmitting funds, the other are constantly receiving them. For this reason and this alone, he should be compelled to vote against the bill.

REMARKS, MARCH 2, 1835,

ON THE APPROPRIATION FOR A MINISTER TO ENGLAND.[1]

Mr. Buchanan was opposed to striking out the appropriation from the bill. The Executive had his duties to perform, for which he was responsible; and the Senate had its duties, for which it was equally responsible. The President had asked this appropriation for a minister to England. The only question for Senators to decide was, whether they ought to make the appropriation? He did not know whether the Executive intended to nominate a minister to England or not during the present session. But there might be a necessity for his doing so between this period and the session of the next Congress; and he (Mr. B.) was unwilling to prevent this from being done, by declaring that the Senate would make no appropriation for the salary and outfit of a minister to England. He concurred entirely, or to a very great extent, with the Senator from Kentucky [Mr. Clay] that the time was likely to arrive when it would be indispensable that we should have a minister at St. James's. Suppose our minister to France should be recalled, under any contingency; it would then, under such a state of things, be indispensable that the United States should have a minister at the English court, for the purpose of representing us, possibly, directly on the spot, or, at least, indirectly, through the British Government. He therefore could not understand the logic which first was presented to the Senate,

[1] Register of Debates, 23 Cong. 2 Sess. XI, part 1, p. 703. The bill making appropriations for the civil and diplomatic service for the year 1835 being before the Senate, an amendment was offered to strike out the appropriation for a minister to Great Britain.

that it was a proposition undeniable, that the appointment of a minister was necessary, and yet that the means for carrying it into effect should be stricken out. But the Executive, added Mr. B., may yet (during the session) send in a nomination. It was for us to make the appropriation, for which we were responsible to the country; and it was for the Executive to make a nomination or not, as his sense of duty may prescribe. Shall we, in anticipation of the President's not doing what he ought, refuse ourselves to do our duty? Certainly not.

REMARKS, MARCH 3, 1835,

ON THE FORTIFICATIONS BILL.[1]

Mr. Buchanan said he was astonished at the remarks which had been made by gentlemen on the subject of this appropriation. The most fearful apprehensions had been expressed; the destruction of our liberties had been predicted, if we should grant to the President 3,000,000 of dollars to defend the country, in case it should become necessary to expend it for that purpose before the next meeting of Congress. For his part, he could realize no such dangers.

Gentlemen have said, and said truly, that the constitution of the United States has conferred upon Congress, and Congress alone, the power of declaring war. When they go further, and state that this appropriation will enable the Executive to make war upon France, without the consent of Congress, they are, in my humble judgment, entirely mistaken.

Sir, said Mr. B., what is the true nature, and what are the legitimate objects, of this appropriation? Do we not know that,

[1] Register of Debates, 23 Cong. 2 Sess. XI., part 1, pp. 734–735; Curtis's Buchanan, I. 241–242; Niles's Weekly Register, March 21, 1835, vol. 48, p. 53. The remarks here given were made upon a message from the House of Representatives, proposing to amend one of the Senate's amendments to the annual fortifications appropriation bill, by adding thereto the following:

"Sec. 2. *And be it further enacted*, That the sum of three millions of dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to be expended, in whole or in part, under the direction of the President of the United States, for the military and naval service, including fortifications and ordnance, and increase of the navy: Provided, such expenditures shall be rendered necessary for the defence of the country prior to the next meeting of Congress."

although the President cannot make offensive war against France, France may make war upon us; and, that we may thus be involved in the hostilities in spite of ourselves, before the next meeting of Congress? If the Chamber of Deputies should determine to violate the treaty, and to fix an enduring stigma upon the public faith of the French nation, is it certain that France may not proceed a step further, and strike the first blow? Mr. Livingston himself, in the correspondence which had been communicated to us by the President, has expressed serious apprehensions that this may be the result. France may consider war, eventually, to be inevitable; she may, and I trust does, believe that we have determined not to submit patiently to her violation of a solemn treaty, and thus abandon the just claims of our injured citizens; and, taking advantage of our unprepared condition, she may commence hostilities herself. The first blow is often half the battle between nations as well as individuals. Have we any security that such will not be her conduct? Have we any reason to believe she will wait until we are ready? Her past history forbids us to indulge too securely in any such belief. If she should adopt this course, in what a fearful condition shall we place the country if we adjourn without making this appropriation? The Senate will observe that not a dollar of this money can be drawn from the treasury, unless it shall become necessary for the defence of the country, prior to the next meeting of Congress.

Another circumstance which renders this appropriation indispensable is, that Congress cannot possibly be convened by the President much before their usual time of meeting. There are, I believe, nine States in this Union who have not yet elected their Representatives to the next Congress. Some of these elections will take place in April, and others not till August, and even October. We have now arrived almost at the last hour of our political existence; and shall we leave the country wholly defenceless until the meeting of the next Congress? Gentlemen have warned us of the fearful responsibility which we should incur in making this appropriation. Sir, said Mr. B., I warn them that the responsibility will be still more dreadful, should we refuse it. In that event, what will be our condition should we be attacked by France? Our seacoast from Georgia to Maine will be exposed to the incursions of the enemy; our cities may be plundered and burnt; the national character may be disgraced; and all this whilst we have an overflowing treasury. When I view the consequences which may possibly flow from our refusal to

make this grant, I repeat that the responsibility of withholding it may become truly dreadful. No portion of it shall rest upon my shoulders.

Our constitutional right to appropriate this money is unquestionable. Whilst I express this opinion, I am sorry that the present appropriation is not more specific in its objects. Appropriation bills ought to be passed in such a manner as to leave as little to executive discretion as possible. The purposes for which the money is to be applied ought to be clearly and distinctly stated. If there were time to do it, the bill might be improved in this respect. But, sir, this is an extraordinary crisis, and demands prompt action. We must now take it as it is, or not take it at all. There is no time left to make the changes which might be desired.

Gentlemen have contended that, under this appropriation, the President would be authorized to increase the army, and appoint as many new officers to command it as he thought proper. But this is not the case. He could not, under any just construction of this bill, raise a single new company, or appoint a single officer, not authorized by existing laws. No such power is conferred upon him by its terms. It will authorize him to expend three millions of the public money, should the contingency happen which it contemplates, for putting the vessels of war, now in ordinary, in a condition for actual service, and for completing those the building of which has already been authorized by Congress. The money may also be applied to the completion and repair of our fortifications, and in placing them in a state of security and defence against any attack. Should it become necessary to call out the militia, under existing laws, to garrison these fortifications, or defend our coast, this money may also be expended for that purpose. There is nothing in the language of the appropriation to justify the construction that the President might raise new armies and create new officers to command them.

It is my own impression that there will be no necessity for expending any portion of this money. If there should be, however, and it is the part of wisdom to provide against such a contingency, let the responsibility rest upon those who refuse the appropriation. The country will be left defenceless, and the very knowledge of the circumstance may invite an attack.

FROM MR. WEBSTER.[1]

[March 21, 1835.]

Dear Sir

My wife may like to go to meeting, or church, tomorrow, in the P.M —Would it not be better, for that reason, that we taste your wine at a later hour than that proposed?

Yrs. truly

D. Webster.

Hon. J. Buchanan. Saturday Mar. 21.

TO MR. VAN BUREN.[2]

(Confidential.)

Lancaster 21 May 1835.

My dear Sir,

I last night received a letter from Mr. Letcher containing such agreeable information from Kentucky, that I cannot refrain from communicating it to you. The following is an extract from the letter which is dated the 11th.

"I have never said one word in relation to the Presidential contest since my return to Ky. except to a few leading friends. I have to them said the contest will most certainly be confined to White and Van Buren,—that as to my single self I was tired of the Tennessee breed of Presidents. That I was inclined to believe Van Buren with all my objections to him would administer the Government more liberally, more justly and more *genteelly* than White. That I did not think he would have a Kitchen Cabinet about him because he was a proud man and believed himself competent to do without such assistance."

"My belief is Van Buren will carry Ky., whether Col. Johnston is placed upon the ticket or not, with very great ease. There is not the most remote probability of the Grand Hall running. Your party will therefore have the power—now take care and use it, with discretion and with a single eye to the honor and glory of the Republic." There is a Postscript to the letter which states that Mr. Clay paid him a visit about ten days before.

You will be better able to judge than I can of the value and importance of this information.

[1] Buchanan Papers, Historical Society of Pennsylvania.

[2] Van Buren MSS., Library of Congress.

From my communications with the Senators last winter I am strongly inclined to believe that you will not be in a minority in the Senate. I should feel very confident of this, if the question were solely between White and yourself. 'Ere long I shall know more upon the subject.

As I cannot think for a moment that the National Convention will exclude either set of Delegates from this State I entertain no apprehension concerning the vote. My opinion is that the division in our party will make Ritner Governor; but that will not seriously affect the Presidential election. I am much mistaken if the Mass of the Democratic Party of the State is not with Wolf; still there is a highly respectable and influential portion of it in favor of Muhlenberg. The friends of Muhlenberg in our party, are almost to a man your sincere and devoted friends. So is a very large majority of the friends of Wolf: still there are leaders amongst us who will shout the loudest and longest for you, should all things go well, who would be delighted with the opportunity of ranging their faces under the White banner. But I have written much more than I intended.

Ever your friend

JAMES BUCHANAN.

HON. MARTIN VAN BUREN.

REMARKS, DECEMBER 21, 1835,

ON INCENDIARY PUBLICATIONS.[1]

Mr. Buchanan was very glad to hear the gentleman from Virginia [Mr. Leigh] express the opinions he had with regard to gentlemen coming from the northern States. He was confident that the gentleman spoke the language of every intelligent man north of the slaveholding States, when he says that they deprecated and would do anything in their power to suppress every publication calculated to endanger the peace, or to injure the feelings of the South. He (Mr. B.) was yet to meet for the

[1] Cong. Globe, 24 Cong. 1 Sess. III. 36. Another version, of the same purport, is printed in the Register of Debates, 24 Cong. 1 Sess. XII., part 1, p. 28. The debate took place on a motion of Mr. Calhoun to refer to a select committee so much of the President's annual message as related to the transmission through the mails of certain publications of a dangerous tendency.

first time the intelligent man at the North who thinks that this Government has any power to interfere in relation to the delicate question involved. Why, then, was he opposed to raising a select committee on this subject? It was simply because, by taking the ordinary course, everything like excitement or party spirit would be put down. He himself had no fear that, by any course pursued, party spirit could be raised there; but if the motion prevailed, the public abroad would ask why was this reference made—why not give it the ordinary direction to the committee whose appropriate charge it was? Were there any gentlemen there unwilling to do everything in the power of Congress for the purpose of suppressing the circulation, through the mails, of improper publications? He apprehended not. It was, then, a mere question of constitutional law; all were willing to do everything that could lawfully be done; and the only thing to be considered was, how far could they go? If (said he) we take this subject from the Committee on the Post Office and Post Roads, and send it to a select committee, it will be considered abroad as a party movement, and he was therefore opposed to giving it such a direction as might lead to that belief.

REMARKS, DECEMBER 22, 1835.[1]

Mr. Buchanan said, that after a thorough examination of the subject, there was one question in this controversy on which he should not hesitate to express a decided opinion. He never should, whilst he had the honor to occupy a seat upon that floor, give a vote which might tend to disturb the States of Indiana or Illinois in the peaceable possession of all the territory within their present boundaries. The constitutional rights of these States, as well as sound policy, equally condemned any course which could interfere with their chartered limits. He was as free to express

[1] Cong. Globe, 24 Cong. 1 Sess. III. 43. Another version, less definite, is given in the Register of Debates, 24 Cong. 1 Sess. XII., part 1, p. 41. The resolution of Mr. Benton, which Mr. Buchanan supported, was that Messrs. Lyon and Norvell, the newly elected Senators from Michigan, be received as spectators, and that chairs be provided for that purpose on the floor, till the final decision of the Senate should be given on the application to admit Michigan to the Union.

this opinion, as the Senator from Indiana himself [Mr. Hendricks.]

The question now before the Senate was one of very little importance. The difference between the two propositions was so slight, as to render it of little importance to him for which of them he should vote. Whether the gentlemen elected Senators by the Legislature of Michigan should be assigned chairs in this chamber as spectators, or should be admitted into it as privileged persons, could not be a matter of consequence to them. We would not prevent them from taking seats, whether they came in under the one resolution or the other. They were the representatives of Michigan, and were now asserting her claim to be admitted as a State into the Union. It was proper that they should be present in the Senate, and have an opportunity of hearing all its proceedings which had any connection with this question. They would be equally admitted under the one or the other resolution. He should vote for the resolution of the Senator from Missouri, [Mr. Benton,] because it seemed to be conformable to the ancient precedents. He would, however, suggest whether it would not be better for him to accept of the modification proposed by the Senator from Indiana, [Mr. Hendricks,] than make a question on this subject. The result would be the same in either case.

1836.

REMARKS, JANUARY 4 AND 5, 1836,

ON THE EXTENSION OF THE CIRCUIT COURT SYSTEM.[1]

[Jan. 4.] The bill supplementary to the act entitled "an act to amend the judicial system of the United States," with a view to extend the circuit court system, being taken up as the special order of the day, Mr. Black, of Mississippi, after some debate, moved an amendment to strike out "Natchez" and insert "Jackson." Mr. Porter, of Louisiana, thought the increase of traveling by the judges, which this amendment would cause, would make the performance of their duties weigh heavily upon them.

Mr. Black said it was only forty-five miles from Pittsburg

[1] Cong. Globe, 24 Cong. 1 Sess. III. 66, 67, 68.

to Jackson, and a daily mail was now running between those places; also, that a railroad would soon be completed on that route, which he thought would meet the objection of the gentleman from Louisiana, [Mr. Porter.]

Mr. Buchanan, for one, would be willing to take the suggestion of the gentleman from Mississippi, [Mr. Black;] but he would suggest himself that a good deal of commercial and maritime business accrued at Natchez; many matters of small amount were litigated there, and he thought it would be burdensome to the parties to oblige them to follow their small claims to Jackson.

Mr. Black's amendment was agreed to.

[Further debate took place, in the course of which Mr. Wright, of New York, offered an amendment in the interest of that State. Mr. Porter deprecated the amendment. He said that the bill was lost during the preceding year by amendments that delayed; and perhaps the Senator from Pennsylvania might be enlightened, and, by moving a similar amendment for his State, further embarrass the bill.]

Mr. Buchanan said, he had been too long following the same lights on this subject to be enlightened at this time, as the Senator from Louisiana supposed he might be. He had been endeavoring for many years to extend the circuit system to the new States, and should continue his exertions until that object was accomplished. What was the single proposition before the Senate? It was to extend this system to the six new States who were justly entitled to it, and who had so long been deprived of it. That was the sole proposition. It was so considered when the bill was introduced, and was so considered by the Judiciary Committee who had it under examination, and who reported on it. It was admitted that it was desirable to extend this system to New York; but suppose it was done by the amendment, what then would be the duty of the Senators from Pennsylvania? The western district of Pennsylvania was not entirely inland. It had considerable maritime frontier, and he understood to-day, for the first time, that there was a petition numerously signed from the western part of Pennsylvania for the establishment of a circuit court for their benefit. Could he and his colleague then sit still, and not ask for this for Pennsylvania when they saw the same favor granted to New York? He would prefer, however, that the circuit system should be extended both in Pennsylvania and New York by a separate bill; and he would advise the gentlemen

from New York to wait, and go *pari passu* with Pennsylvania in accomplishing an object so desirable to both. We want (said Mr. B.) the same advantages for the western district of Pennsylvania that they want for the northern district of New York; but we shall give no vote that will embarrass the passage of the bill.

[Jan. 5.] On motion by Mr. Clayton, the Senate proceeded to the consideration of the bill in addition to the "act to amend the judiciary system of the United States."

Mr. Tallmadge moved an amendment in the second section, after the word "annually," in the twentieth line, by inserting the words, "in the northern district of New York, at Albany, on the first Tuesday in June and the second Tuesday in October," which was agreed to.

Mr. Buchanan moved an amendment in the tenth line of the first section, to make it read, "the eastern and *western* districts of Pennsylvania." Also, in the second section, fifteenth line, by inserting the words, "in the western district, in the city of Pittsburg, on the 17th day of March;" which was agreed to.

Mr. B. also introduced an amendment to prevent the bill in its operation from interfering with the holding of the courts in Utica, in the State of New York, and Williamsport, in the State of Pennsylvania; which was agreed to.

Mr. Clayton moved an amendment in the fourth section, after the word "Alabama," in the eighth line, the words, "the northern district of New York, and western district of Pennsylvania;" which was agreed to.

After some further verbal amendments,

The bill was ordered to be engrossed for a third reading.

REMARKS, JANUARY 6, 1836,

ON ADMISSION TO THE SENATE GALLERIES.[1]

A resolution having been submitted in relation to the use of the Senate galleries, Mr. Clayton, of Delaware, offered to strike out all after the word "Resolved," and insert

That the circular gallery of the Senate Chamber be open for the admission of spectators, and that each Senator be allowed to admit any number, not exceeding three, into the lobby of the Senate, in front of the Chair.

[1] Cong. Globe, 24 Cong. 1 Sess. III. 71, 72.

Mr. Tallmadge, of New York, moved to amend the amendment as follows:

That each Senator have the privilege of admitting into the circular gallery ——— number of gentlemen.

Mr. Webster said the public had a right themselves to the use of the galleries, until they were filled. He was opposed to granting tickets, and was for opening the galleries to all, without distinction of persons. It was preferable that fathers and brothers should meet and sit together in the same gallery, to having them forced into separate galleries, merely because some of them happened not to have ladies in their charge.

Mr. Calhoun said that the amendment to the amendment of the Senator from New York did not answer his purpose at all. He did not wish to be troubled with applications for admission there, nor did he wish to put the people to the trouble of asking for admission. They had a right to be there—to come there, and stay there, whenever the Senate was in session. It was impossible to look at that debate, without seeing the nature of it, and from what quarter the opposition to the resolution came. Those who had got power were not willing that the truth should be heard boldly and openly. We (said he) who are on the opposite side, and who oppose power, ought to desire to give the utmost publicity to our proceedings. No, sir, (said he,) no modification of the amendment will answer my purpose—nothing which will exclude a single individual will ever meet my consent.

Mr. Buchanan said he had not expected this debate could possibly assume the character which it had now taken. The change of the rules of the Senate, in regard to the use of the lobby and galleries, had been made by common consent. It was not the work of any political party in this body. The change was made, as he had supposed, for the accommodation of all parties in the Senate, as well as for that of the people.

Under these circumstances, he could not but feel surprised when the Senator from South Carolina [Mr. Calhoun] very broadly insinuated that there was a struggle in this body between two parties—the one the advocates of liberty, the other of power, and that the advocates of power desired secrecy.

Mr. Calhoun here said that he had *affirmed* it.

The Senator, (continued Mr. B.,) then, has affirmed it. Sir, if the gentleman intends to assert that the friends of the Administration, on this floor, desire to envelop the proceedings

of this body in mystery and darkness, the assertion is wholly unfounded. In saying so, I mean no personal offense. We are not the advocates of power against liberty, and our conduct has never shown that we were. It is easy for the Senator to make general charges of this kind, but he will find it very difficult to place his hand upon any single fact to support them.

Mr. B. said he was neither ashamed nor afraid to speak and to vote and to act, openly and fearlessly and directly, upon every question which may come before the Senate. He did not shun, but courted publicity. Neither his political friends nor himself had anything to conceal. He had never been consulted in respect to the existing rule. He should now vote for the amendment proposed by the Senator from Delaware. [Mr. Clayton.] He was willing that the upper gallery should be thrown open to all visitors who might think proper to attend. Although our convenience might be sacrificed by again crowding the lobby behind the seats of the members, he could endure this inconvenience as well as any other Senator. On this subject he would go as far as he who should go furthest. Let all the American people who can be accommodated be received into this Chamber.

Mr. Calhoun remarked that he was much gratified at what had been said by the Senator from Pennsylvania, and hoped that every gentleman on the same side would concur with him. It was not for him or that gentleman to decide which of them were on the side of liberty in the contest between liberty and power—that must be left to time and to posterity for a fair decision. He was not called on then to show the many arbitrary acts of the present Administration; but on a proper occasion he would be ready to go into the subject. He did hope that this session would show that the gentleman from Pennsylvania, and those with whom he acted, were not the advocates of power. He did hope that when that great measure, the expunging resolutions, came up, it would be seen that those gentlemen would be found on the side of liberty in its contest with power.

Mr. Buchanan said the Senator from South Carolina had acted very wisely in referring the great questions now before this body and the country to time and to posterity. If he had submitted them to the people of the present generation, they are already decided against him.

In relation to his future course (Mr. B. said) he would wait for the proper occasions to present themselves, and should express his opinions on subjects as they came before the Senate.

"Sufficient for the day is the evil thereof." He had no hesitation, however, in *now* declaring his opinion upon the expunging resolution, as the Senator had introduced it into this debate. On that question he should be found in direct opposition to the gentleman.

The question was here taken on Mr. Tallmadge's motion, and it was lost—yeas 6, nays 34.[1]

REMARKS, JANUARY 7 AND 11, 1836,

ON SLAVERY IN THE DISTRICT OF COLUMBIA.[2]

[Jan. 7.] Mr. Buchanan said that, for two or three weeks past, there had been in his possession, a memorial from the Caln quarterly meeting of the religious Society of Friends, in the State of Pennsylvania, requesting Congress to abolish slavery and the slave trade within the District of Columbia. This memorial was not a printed form—its language was not that in established use for such documents. It did not proceed from those desperate fanatics who have been endeavoring to disturb the security and peace of society in the southern States, by the distribution of incendiary pamphlets and papers. Far different is the truth. It emanates from a society of Christians, whose object had always been to promote peace and good will among men, and who have been the efficient and persevering friends of humanity in every clime. To their untiring efforts, more than to those of any other denomination of Christians, we owe the progress which has been made in abolishing the African slave trade throughout the world. This memorial was their testimony against the existence of slavery. This testimony they had borne for more than a century. Of the purity of their motives, there could not be a question.

Mr. B. had omitted to present this memorial at an earlier day, because he had thought that on its presentation, at the

[1] The first part of Mr. Clayton's amendment, declaring the circular gallery open, was then adopted; the second part, allowing the admission of spectators to the lobby, was rejected.

[2] Cong. Globe, 24 Cong. 1 Sess. III. 70, 83. Prior to Mr. Buchanan's remarks, Mr. Morris, of Ohio, had presented several petitions from citizens of that State, one being signed by ladies, for the abolition of slavery in the District of Columbia, and had moved to refer them to the Committee on the District of Columbia.

proper time, much good might be done. He had believed that, by private consultations, some resolution might be devised upon this exciting subject which would obtain the unanimous vote of the Senate. If there was one man in that body not willing to adopt any proper measure to calm the troubled spirit of the South, he did not know him. This, in his judgment, would be the best mode of accomplishing the object which we all desire to accomplish. The proper course to attain this result was, in his opinion, to refer the subject either to a select committee or to the Committee on the District of Columbia. They would examine it in all its bearings; they would ascertain the views and feelings of individual Senators, and he had no doubt they would be able to recommend some measure to the Senate on which they could all unite. This would have a most happy effect upon the country. He had intended, upon presenting the memorial which he had in charge, to have suggested this mode of proceeding. He regretted, therefore, he had not known that his friend from Ohio, [Mr. Morris,] was in possession of memorials having a similar object in view. If he had been informed of it, he should have endeavored to persuade him to wait until Monday next, when he (Mr. B.) would have been prepared to pursue the course he had indicated. But the question has now been forced upon us. No, (said Mr. B.,) it has not been forced upon me, because I am glad to have a suitable occasion of expressing my opinions upon the subject.

The memorial which I have in my possession is entitled to the utmost respect from the character of the memorialists. As I entirely dissent from the opinion which they express, that we ought to abolish slavery in the District of Columbia, I feel it to be due to them, to myself and to the Senate, respectfully, but firmly, to state the reasons why I cannot advocate their views, or acquiesce in their conclusions.

If any one principle of constitutional law can, at this day, be considered as settled, it is, that Congress has no right, no power, over the question of slavery within those States where it exists. The property of the master in his slave existed in full force before the Federal Constitution was adopted. It was a subject which then belonged, as it still belongs, to the exclusive jurisdiction of the several States. These States, by the adoption of the Constitution, never yielded to the General Government any right to interfere with the question. It remains where it was previous to the establishment of our Confederacy.

The Constitution has, in the clearest terms, recognized the right of property in slaves. It prohibits any State into which a slave may have fled from passing any law to discharge him from slavery, and declares that he shall be delivered up by the authorities of such State to his master. Nay, more; it makes the existence of slavery the foundation of political power, by giving to those States in which it exists Representatives in Congress not only in proportion to the whole number of free persons, but also in proportion to three fifths of the number of slaves.

An occasion very fortunately arose in the first Congress to settle this question forever. The Society for the Abolition of Slavery in Pennsylvania brought it before that Congress, by a memorial which was presented on the 11th day of February, 1790. After the subject had been discussed for several days, and after solemn deliberation, the House of Representatives, in Committee of the Whole, on the 23d day of March, 1790, resolved—

"That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them within any of the States; it remaining with the several States alone to provide any regulations therein which humanity and true policy may require."

I have thought it would be proper to present this decision, which was made almost half a century ago, distinctly to the view of the American people. The language of the resolution is clear, precise, and definite. It leaves the question where the Constitution left it, and where, so far as I am concerned, it ever shall remain. The Constitution of the United States never would have been called into existence—instead of the innumerable blessings which have flowed from our happy Union, we should have had anarchy, jealousy, and civil war among the sister republics of which our Confederacy is composed—had not the free States abandoned all control over this question. For one, whatever may be my opinions upon the abstract question of slavery—and I am free to confess they are those of the people of Pennsylvania—I shall never attempt to violate this fundamental compact. The Union will be dissolved, and incalculable evils will rise from its ashes, the moment any such attempt is seriously made by the free States in Congress.

What, then, are the circumstances under which these memorials are now presented? A number of fanatics, led on by foreign incendiaries, have been scattering "arrows, firebrands,

and death" throughout the southern States. The natural tendency of their publications is to produce dissatisfaction and revolt among the slaves, and to incite their wild passions to vengeance. All history, as well as the present condition of the slaves, proves that there can be no danger of the final result of a servile war. But, in the mean time, what dreadful scenes may be enacted before such an insurrection, which would spare neither age nor sex, could be suppressed! What agony of mind must be suffered, especially by the gentler sex, in consequence of these publications! Many a mother clasps her infant to her bosom, when she retires to rest, under dreadful apprehensions that she may be aroused from her slumbers by the savage yells of the slaves by whom she is surrounded. These are the works of the Abolitionists. That their motives may be honest, I do not doubt; but their zeal is without knowledge. The history of the human race presents numerous examples of ignorant enthusiasts, the purity of whose intentions cannot be doubted, who have spread devastation and bloodshed over the face of the earth.

These fanatics, instead of benefiting the slaves who are the objects of their regard, have inflicted serious injuries upon them. Self-preservation is the first law of nature. The masters, for the sake of their wives and children—for the sake of all that is near and dear to them on earth—must tighten the reins of authority over their slaves. They must thus counteract the efforts of the Abolitionists. The slaves are denied many indulgences which their masters would otherwise cheerfully grant; they must be kept in such a state of bondage as effectually to prevent their rising. These are the injurious effects produced by the Abolitionists upon the slave himself. Whilst, on the one hand, they render his condition miserable by presenting to his mind vague notions of freedom never to be realized, on the other, they make it doubly miserable by compelling the master to be severe, in order to prevent any attempts at insurrection. They thus render it impossible for the master to treat his slave according to the dictates of his heart and his feelings.

Besides, do not the Abolitionists perceive that the spirit which is thus roused must protract to an indefinite period the emancipation of the slave? The necessary effect of their efforts is to render desperate those to whom the power of emancipation exclusively belongs. I believe most conscientiously, in whatever light this subject can be viewed, that the best interests of the slave require that the question should be left, where the Consti-

tution has left it, to the slaveholding States themselves, without foreign interference.

This being a true statement of the case, as applied to the States where slavery exists, what is now asked by these memorialists? That in this District of ten miles square—a District carved out of two slaveholding States, and surrounded by them on all sides—slavery shall be abolished. What would be the effects of granting their request? You would thus erect a citadel in the very heart of these States, upon a territory which they have ceded to you for a far different purpose, from which Abolitionists and incendiaries could securely attack the peace and safety of their citizens. You establish a spot, within the slaveholding States, which would be a city of refuge for runaway slaves. You create by law a central point from which trains of gunpowder may be securely laid, extending into the surrounding States, which may, at any moment, produce a fearful and destructive explosion. By passing such a law, you introduce the enemy into the very bosom of these two States, and afford him every opportunity to produce a servile insurrection. Is there any reasonable man who can for one moment suppose that Virginia and Maryland would have ceded the District of Columbia to the United States, if they had entertained the slightest idea that Congress would ever use it for any such purpose? They ceded it for your use, for your convenience, and not for their own destruction. When slavery ceases to exist under the laws of Virginia and Maryland, then, and not till then, ought it to be abolished in the District of Columbia.

Mr. B. said, that notwithstanding these were his opinions, he could not vote for the motion of the Senator from South Carolina, [Mr. Calhoun,] not to receive these memorials. He would not at present proceed to state his reasons, still hoping the Senate could yet agree upon some course which would prove satisfactory to all. With this view, he moved that the whole subject be postponed until Monday next.

And after some further debate, it was so postponed.

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[Jan. 11.] Mr. Buchanan said, he rose to present the memorial of the Caln Quarterly Meeting of the Religious Society of Friends in Pennsylvania, requesting Congress to abolish slavery and the slave trade in the District of Columbia. On this subject he had expressed his opinions to the Senate on

Thursday last. Upon a review of these opinions, he was perfectly satisfied with them. All he should now say was, that the memorial which he was about to present was perfectly respectful in its language. Indeed, it could not possibly be otherwise, considering the source from which it emanated.

It now became his duty to make some motion in regard to this memorial. On Thursday last he had suggested, that the best course, in his opinion, to pursue was, to refer all these memorials to a select committee, or to the Committee on the District of Columbia. He now found that there existed insurmountable obstacles to such a reference; though he still inclined to think it the proper mode of proceeding.

In presenting this memorial, and in exerting himself, so far as in him lay, to secure for it that respectful reception by the Senate which it deserved, he should do his duty to the memorialists; but he owed a duty to himself and to his country, which he would perform. He was clearly of opinion, for the reasons he had stated on Thursday last, that Congress ought not, at this time, to abolish slavery in the District of Columbia, and that it was our duty promptly to place this exciting question at rest. He should therefore move that the memorial be read, and that the prayer of the memorialists be rejected.[1]

REMARKS, JANUARY 13, 1836,

ON THE RELIEF OF SUFFERERS BY FIRE IN NEW YORK.[2]

Mr. Buchanan said, it had not been his intention to say a single word upon this question. He would not do so now, but he distinctly perceived if the friends of the bill yielded to any one of the amendments which had been proposed, the bill was lost. We must take the bill as it now is, or none. For his own part, he took a much more liberal view of the question than some of those gentlemen who had addressed the Senate. What was the state of the case? On the 16th of December last, a capital of

[1] Calhoun's proposal to refuse to receive the petition was defeated by a vote of 36 to 10. Buchanan's motion, while receiving the petition, to reject the prayer of the petitioners, was carried by a vote of 34 to 6. See McMaster's History of the People of the United States, VI. 291–293.

[2] Cong. Globe, 24 Cong. 1 Sess. III. 99, 100.

between seventeen and eighteen millions of dollars had been, in one day, annihilated by fire in our great commercial emporium. Notwithstanding this calamity, not a single failure had since taken place among the merchants of that city. He would say, that he did not believe the history of the commercial world presented an example of such punctuality and such ability to comply with all engagements in the midst of such distress. It was highly honorable, not only to New York, but to the American character. At the time of this destructive fire, the merchants of that city were indebted to the United States about three million six hundred thousand dollars. And what does this bill—first and second sections and all—propose? To give them this amount, or any part of it? No, sir. All that is asked is, that you shall not, in the midst of their distress, extort this sum from them, which, at this moment, may save them from insolvency and ruin, for the purpose of placing it in an overflowing Treasury, where it is not wanted. You are only asked to grant these suffering merchants time to pay this money, provided they give you ample security that the money shall be paid. Is there a single Senator who would not most cheerfully comply with this request, if he did not believe the Constitution to be in his way? Not one. He certainly should not go into the argument of the constitutional question, after what had been already said. He felt confident that a large majority of the Senate were already convinced that the Constitution had nothing to do with the question. After the merchant had entered his goods at the custom-house, and given bonds for the payment of the duties, he became a debtor to the Government, with whom we might make any fair and reasonable terms, as we may do, and have done, with our other debtors. This, he was very clearly of opinion, would not be giving any preference, by any regulation of commerce or revenue, to the ports of one State over those of another.

What is the present condition of the mercantile community of New York? He had observed in the late public journals that money was now worth one, one and a half, and two per cent. a month. The pressure was very great. The present state of tension could not long endure. Without some relief—some speedy relief—it was probable the merchants must yield. Let a single failure take place to the amount of a million, half a million, or a quarter of a million, and, in its consequences, it would produce such ruin in New York as would be felt to the very extremities

of the Union. We might then see that the forbearance which the bill proposes to extend to the merchants is the very best bargain for ourselves which we can make.

The Senator from Kentucky [Mr. Clay] has proposed, as a substitute for this bill, the remission of the duties upon the goods destroyed by fire. In this proposition he entirely concurred. He had always been of opinion, that when merchandise had been destroyed by fire before it had gone into the consumption of the country, the Government ought not to exact the duties. He certainly, however, could not vote that the gentleman's amendment should take the place of the bill; and, more especially, as a remission of duties on the goods destroyed by the fire was a distinct mode of relief, asked for by the citizens of New York, which would yet come before the Senate.

To the Senator from Massachusetts, [Mr. Davis,] he would say, that he felt as friendly to American manufactures and American manufacturers as he or any other gentleman could do, and would go as far to relieve them. But what can we do for them on the present occasion? We have not the power to do anything. And shall we, because we cannot do all the good we desire, do nothing at all? He trusted this bill would pass without any amendment.

[The first section of the bill contained the proviso, "that those who are within the provision of this section, but who may have paid their bonds subsequent to the late fire, shall also be entitled to the benefit of this section, and that the said bonds shall be renewed from the day when the same were paid, and said payments refunded." Mr. King, of Georgia, moved to strike out this proviso.]

Mr. Buchanan said he had but a single remark to make. To adopt this amendment would be to punish those merchants who had paid their bonds punctually, notwithstanding the distress, and to place them in a worse situation than others who had been either unable or unwilling to pay. This he could never consent to do.

REMARKS, JANUARY 18, 1836,

ON RELATIONS WITH FRANCE.[1]

Mr. Clay moved that the messages, with the accompanying documents, be referred to the Committee on Foreign Relations; whereupon,

Mr. Buchanan said that he had been so much gratified with the message [2] which had just been read, that he could not, and he thought he ought not, at this the very first moment, to refrain from expressing his entire approbation of its general tone and spirit. He had watched with intense anxiety the progress of our unfortunate controversy with France. He had hoped, sincerely hoped, that the explanations which had been made by Mr. Livingston, and officially approved by the President of the United States, would have proved satisfactory to the French Government. In this he had found his hopes to be vain. After this effort had failed, he felt a degree of confidence, almost amounting to moral assurance, that the last message to Congress would have been hailed by France, as it was by the American people, as the olive-branch which would have restored amity and good understanding between us and our ancient ally. Even in this,

[1] Cong. Globe, 24 Cong. 1 Sess. III. 113–115.

[2] After the discussion of the controversy with France on January 14, 1835, *supra*, the French Chambers made the necessary appropriation, but coupled with it the condition that the money should not be paid over till the United States had made satisfactory explanations of the language used in the President's annual message of December 2, 1834, in which reprisals were recommended. This recommendation the government of France had already resented by recalling the French minister at Washington, offering to the American minister at Paris his passports, and announcing to the Chambers that diplomatic intercourse between the two countries had been suspended. President Jackson, in his annual message of December 7, 1835, declared that no explanations of his previous message would be given, but at the same time affirmed that the conception that it was his intention to "menace or insult" the government of France was "as unfounded as the attempt to extort from the tears of that nation what her sense of justice may deny would be vain and ridiculous." This disclaimer paved the way to an adjustment; but, before the end was reached, President Jackson sent to Congress his special message of January 15, 1836, to which Mr. Buchanan's remarks refer. In this message he proposed that, as the French Chambers had, since the recommendation of reprisals was made, appropriated the money to pay the claims, and merely withheld it on an inadmissible demand for explanations, provision should be made for excluding French products and French vessels from the ports of the United States, as a measure of present retaliation.

he feared, he was again doomed to be disappointed. The Government of France, unless they change their determination, will not consider this message as sufficient. We have the terms clearly prescribed by the Duc de Broglie, upon which, and upon which alone, the French Government will consent to comply with the treaty, and to pay the five millions of dollars to our injured fellow-citizens. Speculation is now at an end. The clouds and darkness which have hung over this question have vanished. It is now made clear as a sunbeam. The money will not be paid, says the organ of the French Government, unless the Government of the United States shall address its claim officially in writing to France, accompanied by what appeared to him, and he believed would appear to the whole American people without distinction of party, to be a degrading apology. The striking peculiarity of the case—the one which he would undertake to say distinguished it from any other case which had arisen in modern times—in the intercourse between independent nations, was, that the very terms of this apology were dictated to the American Government by the French Secretary for Foreign Affairs. One of these terms was, that it had never entered into the intention—*pensée*, the thought—of this Government to call in question the good faith of the Government of France.

But the French Government proceed still further. Upon the refusal to make this apology, which they ought to have known would never be made—could never be made—they are not content to leave the question where it then was. They have given us notice, in advance, that they will consider our refusal to make this degrading apology an evidence that the misunderstanding did not proceed on our part from mere error and mistake.

In addition to all this, the last note of the Duc de Broglie to Mr. Barton declares that the Government of the United States knows that henceforward the execution of the treaty must depend upon itself. They thus leave us to decide whether we shall make the apology in the prescribed terms, or abandon our claim to the fulfillment of the treaty.

He would not allow himself to express the feelings which were excited in his mind upon hearing these letters of the Duc de Broglie read. Most sincerely, most ardently, did he hope that the French Government, when this message reaches them, if not before, might reconsider their determination, and that all our difficulties might yet pass away. But their language is now clear,

specific, incapable of ambiguity or doubt. It would then become our duty calmly, but firmly, to take such a stand as the interests and the honor of the country may require.

Mr. B. had already said much more than he intended when he rose. He would, however, make another remark before he took his seat. He felt a proper degree of confidence—he might add a great degree of confidence—in the President of the United States. He knew him to be honest and firm, and faithful to his country; prompt to resent its injuries and avenge its wrongs. He confessed he had anticipated a message of a stronger character. He had supposed that a general non-intercourse with France would, at least, have been recommended. But the recommendation was confined to the mere refusal to admit French ships or French productions to enter our ports. It left France free to receive her supplies of cotton from the United States, without which the manufactures of that country could not exist. This was wise, it was prudent; it left to France to judge for herself, if this unnatural contest must still continue, whether she would close her ports against our vessels and our productions.

In the spring of 1832, (Mr. B. did not recollect precisely the time,) Congress passed an act to carry into effect our part of the treaty. Under this treaty, the wines of France had ever since been admitted into the United States upon the favorable terms therein stipulated. Her silks were imported free of duty, in contradistinction to those which came from beyond the Cape of Good Hope. She had for years been enjoying these privileges. Nothing milder, then, could possibly be recommended than to withdraw these advantages from her, and to exclude her vessels and her productions from our ports.

Mr. Calhoun had been constrained to hear this message with far different sentiments than those expressed by the Senator from Pennsylvania, [Mr. Buchanan.] The gentleman declared that he had never heard a message with greater pleasure. For my part, (said Mr. C.,) I have never heard one with more profound regret from the same high quarter, except the one leveled, not against a foreign Power, but against one of the sovereign members of this Confederacy. He came there with a deep conviction that there would be no war with our ancient ally—not because he did not see many indications of an approaching contest, but that the cause was too frivolous for two nations living under constitutions, at this enlightened period, to be plunged into war. He could not look at the small magnitude of the claim

involved, and the extreme frivolousness of the controversy, without indulging the hope that the peace of the country would be preserved—that that greatest of all calamities, a war with our ancient ally, with whom, on all considerations, the most friendly relations ought to be preserved, would be avoided. This message had dispelled those hopes; and the speech of the Senator from Pennsylvania had confirmed the apprehensions it excited. He would not say that war was intended; but he would say, that the conduct of the Executive, as far as he was capable of comprehending it, had been calculated to produce that result. He was bound to speak with candor, representing, as he did, one of the sovereign States, and was compelled to say that his delusions were dispelled. He must say, that the only course has been pursued, by which the peace of the country has been put in jeopardy. If war comes, with all its attendant calamities, truth impelled him, love of country impelled him, and love of justice impelled him, to declare who were the authors of it. No man could be more sensible how painful it was, in a contest such as this, to stand on the side he did. He well remembered that, twenty-four years ago, he raised his voice for war, because he believed that it was just, necessary, and unavoidable, without an utter sacrifice of everything we held sacred. The reasons that then impelled him to raise his voice for war now impelled him to wish for peace—justice, the honor of the nation, and the interests of the country, were deeply involved.

He would go no further back than the treaty with France, to show how little cause there was to involve the country in a war. From the very beginning of the negotiations, after the present King of France came to the throne, the French Ministry took the ground that, although they themselves were well disposed to pay the indemnity, there were some apprehensions that the Legislative Chambers might not be willing to make the necessary appropriation. We all remember (said Mr. C.) that Louis Philippe had just come into power. He came in on popular principles, and the very man who had most contributed to his elevation, General La Fayette, was our warmest friend. But from the very first opening of the negotiations, we were warned that the Legislative Chambers might not make the appropriations. This was not all. In the last stage of the negotiations, when Mr. Rives urged the conclusion of the treaty, he was told that they feared the result would be, instead of putting the relations of the two countries on a more friendly footing, that of involving

them in still greater difficulties; for they feared that the Chambers would not make the appropriations to carry the treaty into effect. If he (Mr. C.) had had the slightest expectation that there would be a discussion on the message this morning, he would have been prepared with the necessary documents from which to quote the correspondence *verbatim;* but, as it was, he pledged himself for the truth of what he stated in substance. Under such circumstances, the French Minister begged Mr. Rives to wait until the French Chambers were consulted, before concluding the treaty; but to this request Mr. Rives was not willing to accede. Now, he put it to every man of honor, whether, in accepting this treaty, at the time and under the circumstances we did, we did not take it with the condition, that the French Chambers would make the appropriation? He submitted it to the judgment of every man, whether this was not the extent of the obligations of the French Ministry? Again: what was the implied obligation on our part? It was, that no impediment should be thrown in the way of a treaty made under such circumstances; but no sooner was the treaty made, than our Minister makes a communication to this Government, in which he speaks in the most exulting terms of his success. This was, perhaps, natural; but what does our Executive? He published this correspondence to the world, thereby creating the first and principal impediment in the way of obtaining the appropriations from the French Chambers. What next? Before the French Chambers had appropriated the money our Secretary of the Treasury drew a bill for the first installment of the indemnity, knowing that the Chambers had not passed the appropriation bill, and knowing that the draft must, therefore, necessarily be protested. Under these adverse circumstances, the treaty was brought before the Chambers, and, after a most powerful struggle, the Ministers lost the appropriation bill by about eight votes—a fact easily accounted for by the publication of Mr. Rives's correspondence.

The Chambers not having made the appropriation, who was responsible for the failure? Certainly not the French Ministers; for so determined were they on this matter, and of such importance was it considered, that the Ministry was dissolved, and the Duc de Broglie retired from office. The French Ministry having again and again acknowledged that there was an immense aversion in the Chambers to making the treaty, we should have made great allowances for their situation; it was our duty to apologize; it was our duty to sustain the French Ministry; but

instead of this, at the opening of the next Congress was that unfortunate message, which has created the present difficulty. It advised the strongest measure next to war, to compel the French to make the payment. The French Chambers then made the appropriation, with the condition annexed, that this message should be explained by our Government. He (Mr. C.) regretted that this condition had been inserted in the appropriation bill; and the French Minister could not be justified in accepting it but by the belief that, without it, the appropriation could not be made. What, then, had been the proceedings of our Executive under such circumstances? He would not undertake, on such voluminous documents as have just been read, to make up an opinion at once. He had not the advantage possessed by the Senator from Pennsylvania, [Mr. Buchanan,] of being acquainted with the contents of these documents beforehand.

[Here Mr. Buchanan said, he had had no other means of being acquainted with the contents of the documents than those possessed by the gentleman from South Carolina—the hearing them read from the Secretary's table.]

Mr. C. continued. He would suspend his opinion for the present; but there were circumstances connected with this message to which there could be no difficulty in referring. He was dissatisfied at not having the letter from the French Chargé, referred to by the President. Why had they not been put in possession of a copy of it? It was a most important letter, and he regretted that they had it not. There was another circumstance necessary to advert to. The President indicated in his message, at the opening of the present session, that he had still hopes that the French would pay the money. Why, then, was not the communication then before them withheld until he heard how the French Government received his opening message? Why was our Chargé recalled from France before this information could be had? Would gentlemen answer? It was certainly a matter of course that he should direct our Chargé to remain until the annual message was received in France. It was certainly a matter of course that he should suspend this message, which was certainly a warlike one, until we had heard how the message was received in France. But if this message reached France before the final determination was made there, he (Mr. C.) feared that the worst would happen. Of all calamities, he feared a war with France, and on the points at issue between the two countries, as one of the greatest that could befall us. We go to

war (said he) for this $5,000,000, and how is it to terminate? How, then, can this debt honorably be discharged? The first cannon that is fired will be a receipt in full, though we shall be compelled, in honor, to continue the war till the debt is paid, or make a dishonorable peace. Which nation can hold out the longest in the contest, or which will suffer the most? Our means of annoyance against France were perhaps equal to those of France against us; but the contest would cost France but little, while it would cost us much. We could inflict on France but little injury, while she could inflict on us a great deal. Mr. C. regarded a war with France as a greater evil than a war with England. We could inflict greater injuries on England than on France. What greater calamity could befall us than a war with France, while England remained neutral? By our neutrality, while England was plunged in war, our commerce was built up; and in the same way, if we go to war with France, will our commerce pass into the hands of England, and her navigating interest will be built up at our expense. In a war necessary for the honor of the country, he would put all these considerations aside; it was in such a war that the muscles and sinews of a country should be stretched to the utmost; but in such a war, where the difficulties in the way of amicable adjustment were so frivolous, where the sum of money withheld was only five millions of dollars, shall we (said he) put in jeopardy our most important interests? Shall we, (said he,) at a time when our institutions are in danger, when it is so important to maintain them, hazard a war with a foreign power? There never was a time (he said) when a war would be so calamitous to this country as the present. If he truly understood the dangers in which our institutions were involved, he was not extravagant in saying that, if we go into war, it may end in their destruction.

He was content to refer the message and documents to the Committee on Foreign Relations, and he hoped that they would consider it with the utmost care, and be able to recommend some course by which the peace of the country might be preserved. He would remind them, however, of one thing, that, to arm, would amount to a declaration of war; it would put us in a hostile attitude towards France. France had sent out a fleet, but she had not intended it as a hostile measure; and, if we regarded the expressions in the official papers of her Government, we should see that she believed there was no legitimate cause of war. He (Mr. C.) regarded the situation in which the parties

stood. As his colleague [Mr. Preston] had observed the other day, why should the defendant be the first to commit an act of aggression? If we arm, (said Mr. C.,) France will further arm; and, between the two countries arming, there will be further cause for war. He could not (he said) sit still in his place, after hearing a message of that character, and after what had been said by the gentleman from Pennsylvania, without making these few remarks. He trusted that war would not take place and he deemed it due to his station there to say that he did not believe there was a legitimate cause for it.

Mr. Cuthbert observed, that in the concluding remarks of the gentleman who had just taken his seat, [Mr. Calhoun,] he had said that "war must inevitably follow the adoption of the measures proposed in the message of the President." War must follow; and how did the gentleman express his sentiments with regard to this result? If you arm, said the gentleman, war is to follow. Then an American Legislature was told that we must remain in a state of passive inactivity!—another nation arming! —that for the defense of our national honor and interests we dare not arm lest war might follow! Did not the blood boil in every American bosom when sentiments such as these were heard in an American Legislature? What! not arm when a powerful fleet was approaching our coasts! Not arm when the rights and dignity of the country were involved! Oh! shame, shame! that such language should be heard from the tongue whose glowing eloquence once kindled a patriotic flame in every American bosom, when the rights of his country were assailed as they are now! He could not sit still and be silent when he heard such language coming from such a quarter.

Mr. Buchanan said, when he made the observations which had called forth the remarks of the Senator from South Carolina, [Mr. Calhoun,] he had believed the message to be the harbinger of peace and not of war. This was still his opinion. In this respect he differed entirely from the gentleman. Under this impression, he had then risen merely to remark, that, considering the provocation which we had received, the tone, the spirit, and the recommendations themselves of the President were mild and prudent, and were well calculated to make an impression upon France, and to render her sensible of her injustice.

It had been far from his intention to excite a general debate upon the French question, and he would not be drawn into it now by the remarks of the Senator from South Carolina. He must,

however, be permitted to say, he was sorry, very sorry, that the gentleman had proclaimed that, if war should come, we are the authors of that war; and it would be the fault, not of the French, but of the American Government. Such a declaration, proceeding from such a source, from a voice so powerful and so potent, would be heard upon the other side of the Atlantic, and there might produce a most injurious effect. He was happy to say, that this sentiment was directly at war with that of our Committee on Foreign Relations, who, in their report of last session, had expressed their decided opinion that the American Government, should it become necessary, must insist upon the execution of the treaty. It was at war with the unanimous resolution of the House of Representatives of the same session, declaring that the treaty must be maintained. He believed it was equally at war with the feelings and opinions of the American people.

Whilst he expressed his hope and his belief that this message would prove to be the olive branch of peace, still there was so much uncertainty in the event, that it now became our imperative duty to prepare for the worst. Shall we, (said Mr. B.,) whilst a powerful fleet is hovering along our southern coast, in a menacing attitude, sit here, and withhold from the President the means which are necessary to place the country in a state of defense? He trusted this would never, never be the case.

The message and documents were then referred to the Committee on Foreign Relations.

SPEECH, FEBRUARY 1 AND 2, 1836,

ON RELATIONS WITH FRANCE.[1]

On Mr. Benton's resolutions, as modified by the mover on the suggestion of Mr. Grundy, for setting apart so much of the Surplus Revenue as may be necessary for the defense and permanent security of the country, Mr. Buchanan said:

Mr. President: I am much better pleased with the first resolution offered by the Senator from Missouri, [Mr. Benton,] since he has modified it upon the suggestion of the Senator from

[1] Cong. Globe, 24 Cong. 1 Sess. III., Appendix, 60–70; Register of Debates, 24 Cong. 1 Sess. XII., part 1, pp. 325–356. This speech was published under the title of the "National Defense."

Tennessee, [Mr. Grundy.] When individuals have more money than they know how to expend, they often squander it foolishly. The remark applies, perhaps, with still greater force to nations. When our Treasury is overflowing, Congress, who are but mere trustees for the people, ought to be especially on their guard against wasteful expenditures of the public money. The surplus can be applied to some good and useful purpose. I am willing to grant all that may be necessary for the public defense, but no more. I am, therefore, pleased that the resolution has assumed its present form.

The true question involved in this discussion is, on whom ought the responsibility to rest for having adjourned on the 3d of March last without providing for the defense of the country? There can be no doubt a fearful responsibility rests somewhere. For my own part, I should have been willing to leave the decision of the question to our constituents. I am a man of peace, and dislike the crimination and recrimination which this discussion must necessarily produce. But it is vain to regret what cannot now be avoided. The friends of the Administration have been attacked; and we must now defend ourselves. I deem it necessary, therefore, to state the reasons why I voted, on the 3d of March last, in favor of the appropriation of $3,000,000 for the defense of the country, and why I glory in that vote.

The language used by Senators in reference to this appropriation has been very strong. It has been denounced as a violation of the Constitution. It has been declared to be such a measure as would not have received the support of the minority, had they believed it could prevail, and that they would be held responsible for it. It has been stigmatized as most unusual—most astonishing—most surprising. And finally, to cap the climax, it has been proclaimed, that the passage of such an appropriation would be virtually to create a dictator, and to surrender the power of the purse and the sword into the hands of the President.

I voted for that appropriation under the highest convictions of public duty; and I now intend to defend that vote against all these charges.

In examining the circumstances which not only justified this appropriation, but rendered it absolutely necessary, I am forced into the discussion of the French question. We have been told that, if we should go to war with France, we are the authors of that war. The Senator from New Jersey has declared that

it will be produced by the boastful vanity of one man, the petulance of another, and the fitful violence of a third. It would not be difficult to conjecture who are the individuals to whom the Senator alludes.

He has also informed us that, in the event of such a war, the guilt which must rest somewhere will be tremendous.

Now, sir, I shall undertake to prove, that scarcely an example exists in history of a powerful and independent nation having suffered such wrongs and indignities as we have done from France, with so much patience and forbearance. If France should now resort to arms—if our defenseless sea-coast should be plundered—if the blood of our citizens should be shed—the responsibility of the Senate, to use the language of the gentleman, will be tremendous. I shall not follow the example of the Senator, and say, their guilt; because that would be to attribute to them an evil intention, which I believe did not exist.

In discussing this subject, I shall first present to the view of the Senate the precise attitude of the two nations towards each other when the appropriation of $3,000,000 was refused, and then examine the reasons which have been urged to justify this refusal. After having done so, I shall exhibit our relations with France as they exist at the present moment, for the purpose of proving that we ought now to adopt the resolutions of the gentleman from Missouri, and grant all necessary appropriations for the defense of the country.

In discussing this subject, it is not my intention to follow the fortification bill either into the chamber of the committee of conference, or into the Hall of the House of Representatives. It is not my purpose to explain the confusion which then existed, and which always must exist after midnight, on the last evening of the session. I shall contend that the Senate ought to have voted the $3,000,000; that the fortification bill ought to have passed the Senate with this amendment; and that, therefore, the Senate is responsible not only for the loss of this appropriation, but for that of the entire bill.

What, then, was the attitude in which we stood towards France at the moment when the Senate rejected this appropriation for the defense of the country? What, at that moment, was known, or ought to have been known, in regard to this question by every Senator on this floor?

The justice of our claims upon France are now admitted by all mankind. Our generosity was equal to their justice.

When she was crushed in the dust by Europe in arms—when her cities were garrisoned by a foreign foe—when her independence was trampled under foot, we refused to urge our claim. This was due to our ancient ally. It was due to our grateful remembrance of the days of other years. The testimony of La Fayette conclusively establishes this fact. In the Chamber of Deputies, on the 13th of June, 1833, he declared that we had refused to unite with the enemies of France in urging our claims in 1814 and 1815; and that, if we had done so, these claims would then have been settled. This circumstance will constitute one of the brightest pages of our history.

Was the sum secured to our injured fellow-citizens by the treaty of the 4th of July, 1831, more than they had a right to demand? Let the report of our Committee on Foreign Relations, at the last session, answer this question. They concur entirely with the President in the statement he had made in his message, that it was absolutely certain the indemnity fell far short of the actual amount of our just claims, independently of damages and interest for the detention; and that it was well known at the time that, in this respect, the settlement involved a sacrifice. But there is now no longer room for any conjecture or doubt upon this subject. The commissioners under the treaty have closed their labors. From the very nature of their constitution, it became the interest of every claimant to reduce the other claims as much as possible, so that his own dividend might thus be increased. After a laborious and patient investigation, the claims which have been allowed by the commissioners, amount to $9,352,193.47. Each claimant will receive but little more than half his principal at the end of a quarter of a century, after losing all the interest.

Why, then, has this treaty remained without execution on the part of France, until this day? Our Committee on Foreign Relations, at the last session, declared their conviction that the King of France "had invariably, on all suitable occasions, manifested an anxious desire, faithfully and honestly, to fulfill the engagements contracted under his authority and his name." They say, that "the opposition to the execution of the treaty, and the payment of our just claims, does not proceed from the King's Government, but from a majority in the Chamber of Deputies."

Now, sir, it is my purpose to contest this opinion, and to show, as I think I can conclusively, that it is not a just inference from the facts.

And here, to prevent all possible misconstruction, either on this side, or on the other side of the Atlantic, if by any accident my humble remarks should ever travel to such a distance, permit me to say that I am solely responsible for them myself. These opinions were in a great degree formed whilst I was in a foreign land, and were there freely expressed upon all suitable occasions. I was then beyond the sphere of party influence, and felt only as an American citizen.

Is it not then manifest, to use the language of Mr. Livingston in his note to the Count de Rigny of the 3d of August, 1834, that the French Government have never appreciated the importance of the subject at its just value? There are two modes in which the King could have manifested this anxious desire faithfully to fulfill the treaty. These are—by words and by actions. When a man's words and his actions correspond, you have the highest evidence of his sincerity. Even then he may be a hypocrite in the eyes of that Being before whom the fountains of human action are unveiled. But, when a man's words and his actions are at variance—when he promises and does not perform or even attempt to perform—when "he speaks the word of promise to the ear and breaks it to the hope"—the whole world will at once pronounce him insincere. If this be true in the transactions of common life, with how much more force does it apply to the intercourse between diplomatists? The deceitfulness of diplomacy has become almost a proverb. In Europe, the talent of overreaching gives a Minister the glory of diplomatic skill. The French school has been distinguished in this art. To prove it, I need only mention the name of Talleyrand. The American school teaches far different lessons. On this our success has, in a great degree, depended. The skillful diplomatists of Europe are foiled by the downright honesty and directness of purpose which have characterized all our negotiations.

Even the established forms of diplomacy contain much unmeaning language, which is perfectly understood by everybody, and deceives nobody. If ministers have avowed their sincerity, and their ardent desire to execute the treaty, to deny them on our part would be insulting, and might lead to the most unpleasant consequences. In forming an estimate of their intentions, therefore, every wise man will regard their actions, rather than their words. By their deeds shall they be known. Let us, then, test the French Government by this touchstone of truth.

The ratifications of the treaty of the 4th of July, 1831, were

exchanged at Washington on the 2d of February, 1832. When this treaty arrived at Paris, the French Chambers were in session, and they continued in session for several weeks. They did not adjourn until the 19th of April. No time more propitious for presenting this treaty to the Chambers could have been selected than that very moment. Europe then was, as I believe it still is, one vast magazine of gunpowder. It was generally believed that the Polish revolution was the spark which would produce the explosion. There was imminent danger of a continental war, in which France, to preserve her existence, would have to put forth all her energies. Russia, Prussia, and Austria were armed and ready for the battle. It was, then, the clear policy of France to be at a good understanding with the United States. If it had been the ardent desire of the King's Government to carry into effect the stipulations of the treaty, they would have presented it to the Chambers before their adjournment. This would undoubtedly have been the course pursued by any President of the United States, under similar circumstances. But the treaty was not presented.

I freely admit that this omission, standing by itself, might be explained by the near approach of the adjournment at the time the treaty arrived from Washington. It is one important link, however, in the chain of circumstances, which cannot be omitted.

The Government of the United States proceeded immediately to execute their part of the treaty. By the act of the 13th of July, 1832, the duties on French wines were reduced according to its terms, to take effect from the day of the exchange of ratifications. At the same session, the Congress of the United States, impelled, no doubt, by their kindly feelings towards France, which had been roused into action by what they believed to be a final and equitable settlement of all our disputes, voluntarily reduced the duty upon silks coming from this side of the Cape of Good Hope to five per cent., whilst those from beyond were fixed at ten per cent. And at the next session, on the 2d of March, 1833, this duty of five per cent. was taken off altogether, and ever since French silks have been admitted into our country free of duty. There is now, in fact, a discrimination duty of ten per cent. in their favor, over silks from beyond the Cape of Good Hope.

What has France gained by these measures in duties on her wines and her silks, which she would otherwise have been bound

to pay? I have called upon the Secretary of the Treasury, for the purpose of ascertaining the amount. I now hold in my hand a tabular statement, prepared at my request, which shows, that had the duties remained what they were at the date of the ratification of the treaty, these articles, since that time, would have paid into the Treasury on the 30th of September, 1834, the sum of $3,061,525. Judging from the large importations which have since been made, I feel no hesitation in declaring it as my opinion, that, at the present moment, these duties would amount to more than the whole indemnity which France has engaged to our fellow-citizens. Before the conclusion of the ten years mentioned in the treaty, she will have been freed from the payment of duties to an amount considerably above twelve million dollars.

By the same act of the 13th of July, 1832, a Board of Commissioners was established to receive, examine, and decide the claims of our citizens under the treaty, who were to meet on the first day of the following August. This act also directed the Secretary of the Treasury to cause the several installments, with the interest thereon, payable to the United States in virtue of the convention, to be received from the French Government and transferred to the United States in such manner as he may deem best. In this respect the provisions of the act correspond with the terms of the treaty, which prescribe that the money shall be paid into the hands of such person or persons as shall be authorized to receive it by the Government of the United States.

Were the French Government immediately informed of all these proceedings? Who can doubt it? Certainly no one at all acquainted with the vigilance and zeal of their diplomatic agents.

The 19th of November, 1832, the day for the meeting of the Chambers, at length arrived. Every American was anxious to know what the King would say in his speech concerning the treaty. No one could doubt but that he would strongly recommend to the Chambers to make the appropriation of twenty-five millions of francs, the first installment of which would become due on the 2d of February following. All, however, which the speech contained in relation to the treaty is comprised in the following sentences: "I have also ordered my Ministers to communicate to you the treaty concluded on the 4th of July, 1831, between my Government and that of the United States of America. This arrangement puts an end to the reciprocal claims of the two countries." Now, sir, I am well aware of the brevity and noncommittal character of Kings' speeches in Europe; I know the

necessity which exists there for circumspection and caution; but making every fair allowance for these considerations, I may at least say, that the speech does not manifest an anxious desire to carry the treaty into effect. What might the King have said, what ought he to have said, what would he have said had he felt this anxious desire? It might all have been embraced in a single additional sentence, such as the following: "The Congress of the United States have already provided for the admission of French wines into their ports upon the terms of this treaty, and have voluntarily reduced their duties upon French silks; I must, therefore, request you to grant me the means of discharging the first installment which will become due, under this treaty, on the 2d day of February next." The King did not even ask the Chambers for the money necessary to redeem the faith of France. In this respect, the debt due to the United States is placed in striking contrast to the Greek loan. Immediately after the two sentences of the speech which I have already quoted, the King proceeds: "You will likewise be called to examine the treaty by which Prince Otho of Bavaria is called to the throne of Greece. *I shall have to request from you the means of guarantying, in union with my allies, a loan which is indispensable for the establishment of the new State founded by our cares and concurrence.*"

The establishment of the new State founded by our cares and concurrence! Russia, sir, has made greater advances by her skill in diplomacy than by her vast physical power. Unless I am much mistaken, the creation of this new State, with Prince Otho as its King, will accomplish the very object which it was the interest and purpose of France to defeat. It will, in the end, virtually convert Greece into a Russian province. I could say much more on the subject, but I forbear. My present purpose is merely to present, in a striking view, the difference between the King's language in relation to our treaty, and that treaty which placed the son of the King of Bavaria on the throne of Greece.

Time passed away, and the 2d of February, 1833, the day when the first installment under the treaty became due, arrived. It was to be paid "into the hands of such person or persons as shall be authorized by the Government of the United States to receive it." The money on that day ought to have been ready at Paris. But strange, but most wonderful as it may appear, although the Chambers had been in session from the 19th of November until the 2d of February, the King's Government had never even pre-

sented the treaty to the Chambers—had never even asked them for a grant of the money necessary to fulfill its engagements. Well might Mr. Livingston say, that they had never properly appreciated the importance of the subject.

The Government of the United States, knowing that the King in his speech had promised to present the treaty to the Chambers, and knowing that they had been in session since November, might have taken means to demand the first installment at Paris on the 2d day of February. Strictly speaking, it was their duty to do so, acting as trustees for the claimants: but they did not draw a bill of exchange at Washington for the first installment, until five days after it had become due at Paris. This bill was not presented to the French Government for payment until the 23d of March, 1833. Even at that day, the French Ministry had not presented either the treaty or a bill to carry it into effect to the Chambers. The faith of France was thus violated by the neglect of the King's Government, long before any bill was presented. They, and not the Chambers, are responsible for this violation. It was even impossible for the Chambers to prevent it. Had this treaty and bill been laid before them in time to have enabled them to redeem the faith of France, the loyalty of the French character would never have permitted them to be guilty of a positive violation of national honor. The faith of the nation was forfeited before they were called upon to act. The responsibility was voluntarily assumed by the King's Ministers. The Chambers are clear of it. Besides, the Ministry were all powerful with the Chambers during that session. They carried everything they urged. Even the bill providing the means of guarantying the Greek loan, became a law. Can it, then, for a single moment, be believed, that, if a bill to carry into effect our treaty—a treaty securing such important advantages to France—had been presented at an early period of the session and had been pressed by the Ministry, they would have failed in the attempt? At all events, it was their imperative duty to pursue this course. The aspect of the political horizon in Europe was still lowering. There was still imminent danger of a general war. France was still in a position to make her dread any serious misunderstanding with the United States.

After all this, on the 26th of March, the Duke de Broglie, in a note to Mr. Niles, our Chargé d'Affaires at Paris, stated, that it was "a source of regret, and, indeed, of astonishment, that the Government of the United States did not think proper to have an

understanding with that of France, before taking this step." What step? The demand of an honest debt, almost two months after it had been due, under a solemn treaty. Indeed, the Duke, judging from the tone of his note, appears almost to have considered the demand an insult. To make a positive engagement to pay a fixed sum on a particular day, and when that sum is demanded nearly two months after, to express astonishment to the creditor, would, in private life, be considered trifling and evasive.

The excuse made by the French Ministry for their conduct is altogether vain. Had they dreaded the vote of the Chambers—had they been afraid to appear before them with their treaty and their bill, they would, and they ought to have communicated their apprehensions to this Government, and asked it to suspend the demand of the money; but they had never whispered such a suspicion, after the exchange of the ratifications of the treaty; and the first intimation of it on this side of the Atlantic was accompanied by the astounding fact that the French Government had dishonored our bill. It is true that, before the treaty was signed, they had expressed some apprehensions to Mr. Rives on this subject. These, it would seem, from their subsequent conduct, were merely diplomatic, and intended to produce delay; because, from the date of the treaty, on the 4th of July, 1831, until after our bill of exchange was dishonored in March, 1833, no intimation of danger from that quarter was ever suggested. These circumstances made a great noise throughout Europe, and soon became the subject of general remark.

On the 6th of April, 1833, a year and more than two months after the exchange of the ratifications at Washington, the treaty and bill were first presented to the French Chambers. The session closed on the 25th of April, without any further action upon the subject. No attempt was made by the Ministry to press it; and as the session would terminate so soon, perhaps no attempt ought to have been made. But, as the new session was to commence the day after the termination of the old, and to continue two months, a favorable opportunity was thus presented to urge the passage of the law upon the Chambers. Was this done? No, sir. The Ministry still continued to pursue the same course. They suffered the remainder of the month of April to pass, the month of May to pass, and not until the 11th of June, only fifteen days before the close of the session, did they again present the bill to carry into effect the treaty. It was referred to a com-

mittee, of which Mr. Benjamin Delessert was the chairman. On the 18th of June he made a report. This report contains a severe reprimand of the French Government for not having presented the bill at an earlier period of the session; and expresses the hope that the treaty may be communicated at the opening of the next session. If we are to judge of the opinion of the Chamber from the tone and character of this report, instead of being hostile to the execution of the treaty, had it been presented to them in proper time, they felt every disposition to regard it in a favorable light. I shall read the whole report: it is very short, and is as follows:

"Gentlemen: The committee charged by you to examine the bill relative to the treaty concluded on the 4th of July, 1831, between France and the United States, has demanded a number of documents and reports, which must be examined in order to obtain a complete knowledge of so important a transaction.

"The committee was soon convinced that a conscientious examination of these papers would require much time; and that, at so advanced a period of the session, its labors would have no definitive result. It regrets that, from motives which the Government only can explain, the bill was not presented earlier to the Chamber for discussion. It regrets this so much the more as it is convinced of the importance of the treaty, which essentially interests our maritime commerce, our agriculture, and our manufactures.

"Several chambers of commerce, particularly those of Paris and Lyons, have manifested an ardent desire that the business should be speedily terminated.

"The committee would be satisfied if, after a deeper study of the question, it could enlighten the Chamber with regard to the justice of the claims alleged by each of the parties to the treaty, and which form the basis of it; but as time does not allow a definitive report to be made on the subject, it considers itself as the organ of the Chamber, in expressing the wish that this treaty be communicated at the opening of the next session; and that its result may be such as to strengthen the bonds of friendship which must ever exist between two nations so long united by common interest and sympathy."

After a careful review of this whole transaction, I am convinced that the Government of France never would have pursued such a course towards us, had they entertained a just sense of our power, and our willingness to exert it in behalf of our injured

fellow-citizens. Had Russia or Austria been her creditors, instead of ourselves, the debt would have been paid when it became due; or at the least, the Ministers of the King would have exerted themselves in a far different manner, to obtain the necessary appropriation from the Chambers. I am again constrained, however reluctantly, to adopt the opinion which I had formed at the moment. Our fierce political strife in this country is not understood in Europe, and least of all, perhaps, in France. During the autumn of 1832, and the session of 1832–'3, it was believed abroad that we were on the very eve of a revolution; that our glorious Union was at the point of dissolution. I speak, sir, from actual knowledge. Whilst the advocates of despotism were looking forward, with eager hope, to see the last free Republic blotted from the face of nations, the friends of freedom throughout the world were disheartened, and dreaded the result of our experiment. The storm did rage in this country with the utmost violence. It is no wonder that those friends of liberty, on the other side of the Atlantic, who did not know how to appreciate the recuperative energies of a free and enlightened people, governed by Federal and State institutions of their own choice, should have been alarmed for the safety of the Republic. For myself I can say that I never felt any serious apprehension; yet the thrill of delight with which I received the news of the passage of the famous compromise law of March, 1833, can never be effaced from my memory. I did not then stop to inquire into the nature of its provisions. It was enough for me to know that the Republic was safe, not only in my own opinion, but in the opinion of the world.

Suppose, sir, that the President of the United States, under similar circumstances, had withheld a treaty from Congress, requiring an appropriation, for fourteen months after it had been duly ratified, and had thus forfeited the national faith to a foreign Government, what would have been the consequence? Sir, he ought to have been, he would have been impeached. No circumstances could ever have justified such conduct in the eyes of the American Congress or the American people.

After all the provocation which the President had received, as the representative of his country, what was his conduct? It might have been supposed that this violent man, as the Senator from New Jersey [Mr. Southard] has designated him, would at once have recommended decisive measures. Judging from his energy,—from his well-known devotion to the interests of his

country,—and above all, from his famous declaration to ask nothing from foreign nations but what was right, and to submit to nothing wrong, I should have expected from him an indignant message at the commencement of the next session of Congress. Instead of that, the message of December, 1833, in relation to French affairs, is of the mildest character. It breathes a spirit of confident hope that our ancient ally would do us justice during the next session of the Chambers. His exposition of this subject is concluded by the following declaration:

"As this subject involves important interests, and has attracted a considerable share of the public attention, I have deemed it proper to make this explicit statement of its actual condition; and should I be disappointed in the hope now entertained, the subject will be again brought to the notice of Congress in such a manner as the occasion may require."

And thus ends the first act of this astonishing historical drama. Throughout the whole of it, beginning, middle, and end, the French Government, and not the French Chambers, were exclusively to blame.

We have now arrived at the mission of Mr. Livingston. He reached Paris in September, 1833. The Duke de Broglie assured him "that the King's Government would willingly, and without hesitation, promise to direct the deliberations of the Chambers to the *projet de roi* relative to the execution of the convention of July 4, 1831, on the day after the Chamber is constituted, and to employ every means to secure the happy conclusion of an affair, the final determination of which the United States cannot desire more ardently than ourselves." After this assurance, and after all that had passed, it was confidently expected that the King would, in strong terms, have recommended the adoption of the appropriation by the Chambers. In this we were again doomed to disappointment. In his opening speech, he made no direct allusion to the subject. He simply says, that "the financial laws, and those required for the execution of treaties, will be presented to you."

The bill was presented, and debated, and finally rejected by the Chamber of Deputies on the 1st day of April, 1834, by a vote of 176 to 168. It is not my present purpose to dwell upon the causes of this rejection. No doubt the principal one was, that the French Ministers were surprised near the conclusion of the debate, and were unable at the moment to show that the captures

at St. Sebastian were not included in our treaty with Spain. I am sorry they were not better prepared upon this point; but I attribute to them no blame on that account.

It has been urged over and over again, both on this floor and elsewhere, that the rejection of the treaty was occasioned by the publication in this country of Mr. Rives's letter to Mr. Livingston, of the 8th July, 1831. Is this the fact? If it be so, it ought to be known to the world. If it be not, both the character of this Government and of Mr. Rives should be rescued from the imputation. What is the opinion expressed in this letter? Is it that the American claimants would obtain, under the treaty, more than the amount of their just claims? No such thing. Is it that they would obtain the amount of their just claims with interest? Not even this. The negotiator merely expresses the opinion that they would receive every cent of the principal. He does not allege that they would receive one cent of interest for a delay of nearly a quarter of a century. This opinion is evidently founded upon that expressed by Mr. Gallatin, in a dispatch dated on the 14th of January, 1822, cited by Mr. Rives, in which the former expresses his belief that $5,000,000 would satisfy all our just claims. It ought to be observed that the sum stipulated to be paid by the treaty is only twenty-five millions of francs, or about $4,700,000; and that more than nine years had elapsed between the date of Mr. Gallatin's dispatch and the signing of the treaty. These facts all appear on the face of the letter, with the additional fact, that the statements of the claimants, which have from time to time been presented to Congress, carry the amount of the claims much higher. These statements, however, Mr. Rives did not believe were a safe guide.

This is the amount of the letter, when fairly analyzed, which, it is alleged, destroyed the treaty before the French Chambers. If a copy of it had been placed in the hands of every Deputy, it could not possibly have produced any such effect.

That it did not occasion the rejection of the treaty is absolutely certain. I have examined the whole debate for the purpose of discovering any allusion to this letter, but I have examined it in vain. Not the slightest trace of the letter can be detected in any of the numerous speeches delivered on that occasion. The topics of opposition were various, and several of them of a strange character, but the letter is not even once alluded to throughout the whole debate. If its existence were known at the time in the French Chambers, the letter, written

by a Minister to his own Government, expressing a favorable opinion of the result of his own negotiations, was a document of a character so natural, so much to be expected, that not one Deputy in opposition to the treaty believed it to be of sufficient importance even to merit a passing notice. Still, I have often thought it strange it had never been mentioned in the debate. The mystery is now revealed. The truth is, this letter, which is alleged to have produced such fatal effects, was entirely unknown to the members of the French Chamber when they rejected the treaty. This fact is well established by a letter from Mr. Jay, the chairman of the committee appointed by the Chamber of Deputies to investigate our claims, addressed to Mr. Gibbes, and dated at Paris on the 24th of January, 1835. I shall read it:

Extract of a letter from Mr. Jay to Mr. Gibbes, dated 24th of January, 1835.—"It is asserted in the American prints that the rejection of the American treaty by the Chamber of Deputies, at their last session, was chiefly owing to the publication of a letter from Mr. Rives to his own Government. This is an error which justice to that distinguished statesman, and a sense of his unremitting exertions to promote the interests of his Government while here, induced me formally to contradict. No such evidence appears in the debates: and in none of my conversations with the members have I ever heard his letter alleged as the motive for disputing the amount due. I much question, indeed, if any other Deputy than myself ever read the letter alluded to."

We have now arrived at that point of time when a majority of the French Chamber arrayed themselves against the treaty. This decision was made on the 1st of April, 1834. Some apprehensions then prevailed among the King and his Ministers. The business was now becoming serious. New assurances had now become necessary to prevent the President from presenting the whole transaction to Congress, which they knew would still be in session, when the information of the rejection would reach the United States. In his annual message at the commencement of the session, it will be recollected, he had declared that, should he be disappointed in the hope then entertained, he would again bring the subject before Congress in such a manner as the occasion might require. They knew that he was a man who performed his promises, and a great effort was to be made to induce him to change his purpose.

Accordingly, a French brig of war, the Cuirassier, is fitted out with dispatches to Mr. Serrurier. They reached him on the

3d of June. On the 4th he has an interview with Mr. McLane, and makes explanations which the latter very properly requests may be reduced to writing. In compliance with this request the French Minister, on the 5th, addresses a note to Mr. McLane. After expressing the regrets of the French Government at the rejection of the bill, he uses the following language: "The King's Government, sir, after this rejection, the object of so much painful disappointment to both Governments, has deliberated, and its unanimous determination has been to make an appeal from the first vote of the present Chamber to the next Chamber, and to appear before the new Legislature with its treaty and its bill in hand.

"It flatters itself that the light already thrown upon this serious question, during these first debates, and the expression of the public wishes becoming each day more clear and distinct, and finally, a more mature examination, will have, in the mean time, modified the minds of persons, and that its own conviction will become the conviction of the Chambers. The King's Government, sir, will make every loyal and constitutional effort to that effect, and will do all that its persevering persuasion of the justice and of the mutual advantages of the treaty authorizes you to expect from it. Its intention, moreover, is to do all that our constitution allows; to hasten, as much as possible, the period of the new presentation of the rejected law.

"Such, sir, are the sentiments, such the intentions of his Majesty's Government. I think I may rely that, on its part, the Government of the Republic will avoid, with foreseeing solicitude, in this transitory state of things, all that might become a cause of fresh irritation between the two countries, compromit the treaty, and raise up an obstacle, perhaps insurmountable, to the views of reconciliation and harmony which animate the King's council."

Now, sir, examine this letter, even without any reference to the answer of Mr. McLane, and can there be a doubt as to its true construction? It was not merely the disposition, but "it was the *intention* of the King's Government to do all that their Constitution allows; to hasten, as much as possible, the period of the new presentation of the rejected law." The President knew that under the Constitution of France the King could at any time convoke the Chambers upon three weeks' notice. It was in his power, therefore, to present this law to the Chambers whenever he thought proper. The promise was to hasten this presentation

as much as possible. Without anything further, the President had a right confidently to expect that the Chambers would be convoked in season to enable him to present their decision to the Congress of the United States in his next annual message. The assurance was made on the 5th of June, and Congress did not assemble until the beginning of December. But the letter of Mr. McLane, of the 27th of June, removes all possible doubt from this subject. He informs Mr. Serrurier that, "the President is still unable to understand the causes which led to the result of the proceeding in the Chamber, especially when he recollected the assurances which had so often been made by the King and his Ministers, of their earnest desire to carry the convention into effect, and the support which the Chamber had afforded in all the other measures proposed by the King." And again:

"The assurances which M. Serrurier's letter contains of the adherence of the King's Government to the treaty; of its unanimous determination to appeal from the decision of the present to the new Chamber, and its conviction that the public wish and a mature examination of the subject will lead to a favorable result, and its intention to make every constitutional effort to that effect; and, finally, its intention to do all that the Constitution allows to hasten the presentation of the new law, have all been fully considered by the President.

"Though fully sensible of the high responsibility which he owes to the American people in a matter touching so nearly the national honor, the President, still trusting to the good faith and justice of France, willing to manifest a spirit of forbearance so long as it may be consistent with the rights and dignity of his country, and truly desiring to preserve those relations of friendship which, commencing in our struggle for independence, form the true policy of both nations, and sincerely respecting the King's wishes, will rely upon the assurances which M. Serrurier has been instructed to offer, and will therefore await with confidence the promised appeal to the new Chamber.

"The President, in desiring the undersigned to request that his sentiments on this subject may be made known to His Majesty's Government, has instructed him also to state his expectation that the King, seeing the great interests now involved in the subject, and the deep solicitude felt by the people of the United States respecting it, will enable him, when presenting the subject to Congress, as his duty will require him to do at the opening

of their next session, to announce at that time the result of that appeal, and of His Majesty's efforts for its success."

Had this letter of Mr. McLane placed a different construction upon the engagement of the French Government from that which Mr. Serrurier intended to communicate, it was his duty to make the necessary explanations without delay. He, in that case, would have done so instantly. It was a subject of too much importance to suffer any misapprehension to exist concerning it for a single moment.

Notwithstanding all which had passed, the President, on the faith of these assurances of the French Government, suffered Congress to adjourn without presenting the subject to their view. This rash, this violent man, instigated by his own good feelings towards our ancient ally, and by his love of peace, determines that he would try them once more, that he would once more extend the olive branch before presenting to Congress and the nation a history of our wrongs. I confess I do not approve of this policy. I think the time had then arrived to manifest to France some sensibility on our part on account of her delay in executing the treaty. I believe that such a course would have been dictated by sound policy.

What were the consequences of this new manifestation of the kindly feelings of the President towards France? Was it properly appreciated by the French Government? Was it received in the same liberal and friendly spirit from which it had proceeded? Let the sequel answer these questions. I shall read you Mr. Livingston's opinion on the subject. In a letter to Mr. Forsyth, under date of the 22d of November, 1834, he thus expresses himself:

"I do not hope for any decision on our affairs before the middle of January. One motive for delay is an expectation that the message of the President may arrive before the discussion, and that it may contain something to show a strong national feeling on the subject. *This is not mere conjecture; I know the fact;* and I repeat now, from a full knowledge of the case, what I have more than once stated in my former dispatches as my firm persuasion, that the moderate tone taken by our Government when the rejection was first known, was attributed by some to indifference, or to a conviction on the part of the President that he would not be supported in any strong measure by the people, and by others to a consciousness that the convention had given us more than we were entitled to ask."

I shall now proceed to show in what manner the French Government performed the engagement which had been made by their representative in Washington, to hasten the presentation of the rejected law as much as possible.

The Chambers met on the 31st of July, and the King made them a speech. This speech contains no allusion to the subject of the treaty except the following: "The laws necessary for carrying treaties into effect, and those still required for the accomplishment of the promises of the Chamber, will be again presented to you in the course of this session." The rejected bill was not presented. After a session of two weeks, the Chambers were prorogued on the 16th of August until the 29th of December—a day almost a month after the next meeting of Congress.

I admit that strong reasons existed for dispensing with that part of the obligation which required the French Government to present the bill at this short session. No good reason has ever been alleged or can be alleged to excuse them for proroguing the Chambers until so late a day as the 29th of December. They might have met, and they ought to have met, at an early period of the autumn. They have heretofore met, on different occasions, for the dispatch of business, in every month of the year. It was in vain that Mr. Livingston urged the necessity of an earlier meeting on the Count de Rigny. It was in vain that he appealed to the positive engagement of the French Government made by Mr. Serrurier. It was in vain that he declared to him, "that the President could not, at the opening of the next session of Congress, avoid laying before that body a statement of the then position of affairs on this interesting subject, nor, under any circumstances, permit that session to end, as it must, on the 3d of March, without recommending such measures as he may deem that justice and the honor of the country may require." All his remonstrances were disregarded. Instead of hastening the presentation of the rejected law as much as possible, they refused to assemble the Chambers in time even to present the bill before the meeting of Congress. Their meeting was so long delayed, as to render it almost impossible that their determination should be known in this country before the close of the session, notwithstanding the President had agreed not to present the subject to Congress at the previous session, under a firm conviction that he would receive this determination in time to lay it before them at the commencement of their next session. Is there a Senator in

this Hall who can believe for a moment that if the President had been informed the rejected bill would not be laid before the Chambers until the 29th of December, he would have refrained from communicating to Congress, at their previous session, the state of the controversy between the two countries? Upon this construction, the engagement of the French Government was mere words, without the slightest meaning; and the national vessel which brought it in such solemn form, might much better have remained at home.

What was the apology—what the pretext under which the King's Government refused to assemble the Chambers at an earlier period? It was, that Mr. Serrurier had made no engagement to that effect, and that the intention which he had expressed in behalf of his Government to do all that the Constitution allows, to hasten, as much as possible, the period of the new presentation of the rejected law, meant no more than that this was their disposition. The word "intention" is thus changed into "disposition" by the Count de Rigny; and the whole engagement which was presented to the President in such an imposing form, was thus converted into a mere unmeaning profession of their desire to hasten this presentation as much as possible.

Sir, at the commencement of the session of Congress, it became the duty of the President to speak; and what could any American expect that he would say? The treaty had been violated in the first instance by the Ministers of the French King, in neglecting to lay it before the Chambers until after the first installment was due. It was then twice submitted at so late a period of the session, that it was impossible for the Chambers to examine and decide the question before their adjournment. On the last of these occasions, the chairman of the committee to which the subject was referred had reported a severe reprimand against the Government for not having sooner presented the bill, and expressed a hope that it might be presented at an early period of the next session. It was then rejected by the Chamber of Deputies; and when the French Government had solemnly engaged to hasten the presentation of the rejected law as soon as their constitution would permit, they prorogue the Chambers to the latest period which custom sanctions, in the very face of the remonstrances of the Minister of the United States. I ask again, sir, before such an array of circumstances, what could any man, what could any American expect the President would say in his message? The cup of forbearance had been drained by

him to the very dregs. It was then his duty to speak so as to be heard and to be regarded on the other side of the Atlantic. If the same spirit which dictated the message, or anything like it, had been manifested by Congress, the money, in my opinion, would, ere this, have been paid.

The question was then reduced to a single point. We demanded the execution of a solemn treaty; it had been refused. France had promised again to bring the question before the Chambers as soon as possible. The Chambers were prorogued until the latest day. The President had every reason to believe that France was trifling with us, and that the treaty would again be rejected. Is there a Senator within the sound of my voice, who, if France had finally determined not to pay the money, would have tamely submitted to this violation of national faith? Not one!

The late war with Great Britain elevated us in the estimation of the whole world. In every portion of Europe we have reason to be proud that we are American citizens. We have paid dearly for the exalted character we now enjoy among the nations, and we ought to preserve it, and transmit it unimpaired to future generations. To them it will be a most precious inheritance.

If, after having compelled the weaker nations of the world to pay us indemnities for captures made from our citizens, we should cower before the power of France, and abandon our rights against her when they had been secured by a solemn treaty, we should be regarded as a mere Hector among the nations. The same course which you have pursued towards the weak, you must pursue towards the powerful. If you do not, your name will become a by-word and a proverb.

But under all the provocations which the country had received, what is the character of that message? Let it be scanned with eagle eyes, and there is nothing in its language at which the most fastidious critic can take offense. It contains an enumeration of our wrongs in mild and dignified language, and a contingent recommendation of reprisals, in case the indemnity should again be rejected by the Chambers. But in this, and in all other respects, it defers entirely to the judgment of Congress. Every idea of an intended menace is excluded by the President's express declaration. He says: "Such a measure ought not to be considered by France as a menace. Her pride and power are too well known to expect anything from her fears, and preclude the

necessity of the declaration, that nothing partaking of the character of intimidation is intended by us."

I ask again, is it not forbearing in its language? Is there a single statement in it not founded upon truth? Does it even state the whole truth against France? Are there not strong points omitted? All these questions must be answered in the affirmative. On this subject, we have strong evidence from the Duke de Broglie himself. In his famous letter to Mr. Pageot of June 17, 1835—the arrow of the Parthian as he flew—this fact is admitted. He says:

"If we examine in detail the message of the President of the United States, (I mean that part of it which concerns the relations between the United States and France,) it will possibly be found, that passing successively from phrase to phrase, none will be met that cannot bear an interpretation more or less plausible, nor of which, strictly speaking, it cannot be said that it is a simple *exposé* of such a fact, true in itself, or the assertion of such or such a right which no one contests, or the performance of such or such an obligation imposed on the President by the very nature of his functions. There will certainly be found several in which the idea of impeaching the good faith of the French Government, or of acting upon it through menace or intimidation, is more or less disavowed."

It was the whole message, and not any of the detached parts, at which the French Government chose to take offense.

It is not my present purpose to discuss the propriety of the recommendation of reprisals, or whether that was the best mode of redress which could have been suggested. Some decided recommendation, however, was required from the Executive, both by public opinion and by the wrongs which we had so long patiently endured.

Who can suppose that the Executive intended to menace France, or to obtain from her fears what would be denied by her sense of justice? The President, in this very message, expressly disclaims such an idea. Her history places her far above any such imputation. The wonder is, how she could have ever supposed the President, against his own solemn declaration, intended to do her any such injustice. She ought to have considered it as it was, a mere executive recommendation to Congress, not intended for her at all—not to operate upon their fears, but upon their deliberations in deciding whether any and

what measures had been adopted to secure the execution of the treaty. But on this object I shall say more hereafter.

We have now arrived at the special message of the President to Congress of the 26th of February last; a document which has a most important bearing on the appropriation of the $3,000,000 which was rejected by the Senate. I have given this historical sketch of our controversy with France for the purpose of bringing Senators to the very point of time, and to the precise condition of this question, when the Senate negatived that appropriation.

What had Congress done in relation to the French question when this message was presented to us? Nothing, sir, nothing. The Senate had unanimously passed a resolution on the 15th of January, that it was inexpedient, at present, to adopt any legislative measure in regard to the state of affairs between the United States and France. This unanimity was obtained by two considerations. The one was, that the French Chambers had convened, though not for the purpose of acting upon our treaty, on the 1st, instead of the 29th of December, a fact unknown to the President at the date of his message. The other, that this circumstance afforded a reasonable ground of hope that we might learn their final determination before the close of our session on the 3d of March. But whatever may have been the causes, the Senate had determined that, for the present, nothing should be done.

In the House of Representatives, at the date of the special message on the 26th of February, no measure whatever had been adopted. The President had just cause to believe that the sentiments contained in his message to Congress, at the commencement of their session, were not in unison with the feelings of either branch of the Legislature. He, therefore, determined to lay all the information in his possession before Congress, and leave it for them to decide whether any or what measures should be adopted for the defense of the country. I shall read this passage. It is as follows:

"I transmit to Congress a report from the Secretary of State, with copies of all the letters received from Mr. Livingston since the message to the House of Representatives of the 6th instant, of the instructions given to that Minister, and of all the late correspondence with the French Government in Paris, or in Washington, except a note of Mr. Serrurier, which, for reasons stated in the report, is not now communicated.

"It will be seen that I have deemed it my duty to instruct Mr. Livingston to quit France with his legation, and return to the United States, if an appropriation for the fulfillment of the convention shall be refused by the Chambers.

"The subject being now, in all its present aspects, before Congress, whose right it is to decide what measures are to be pursued on that event, I deem it unnecessary to make further recommendation, being confident that, on their part, everything will be done to maintain the rights and honor of the country which the occasion requires."

The President leaves the whole question to Congress. What was the information then communicated? That a very high state of excitement existed against us in France. That the French Minister had been recalled from this country; an act which is generally the immediate precursor of hostilities between nations. Besides, Mr. Livingston, who was a competent judge and on the spot, with the best means of knowledge, informed his Government, that he would not be surprised, should the law be rejected, if they anticipated our reprisals by the seizure of our vessels in port, or the attack of our ships in the Mediterranean by a superior force. Such were his apprehensions upon this subject that he felt it to be his duty, without delay, to inform Commodore Patterson of the state of things, so that he might be upon his guard.

Ought these apprehensions of Mr. Livingston to have been discouraged? Let the history of that gallant people answer this question. How often has the injustice of their cause been concealed from their own view, by the dazzling brilliancy of some grand and striking exploit? Glory is their passion, and their great Emperor, who knew them best, often acted upon this principle. To anticipate their enemy, and commence the war with some bold stroke, would be in perfect accordance with their character.

Every Senator, when he voted upon the appropriation, must have known, or at least might have known, all the information which was contained in the documents accompanying the President's message.

It has been objected, that if the President desired this appropriation of $3,000,000, he ought to have recommended it in his message. I protest against this principle. He acted wisely, discreetly, and with a becoming respect for Congress, to leave the whole question to their decision. This was especially proper,

as he had not thought proper to adopt any measure in relation to the subject.

Suppose the President had, in his special message, recommended this appropriation, what would have been said, and justly said, upon the subject? Denunciations the most eloquent would have resounded against him throughout the whole country from Georgia to Maine. It would have everywhere been proclaimed as an act of Executive dictation. In our then existing relations with France, it would have been said, and said with much force, that such a recommendation from the Executive might have had a tendency to exasperate her people, and produce war. Besides, I shall never consent to adopt the principle, that we ought to take no measures to defend the country without the recommendation of the Executive. This would be to submit to that very dictation, against which, on other occasions, gentlemen themselves have so loudly protested. No, sir, I shall always assert the perfect right of Congress to act upon such subjects, independently of any Executive recommendation.

This special message was referred to the Committee on Foreign Relations, in the House of Representatives, on the 26th of February. On the next day they reported three resolutions, one of which was, "that contingent preparations ought to be made to meet any emergency growing out of our relations with France." The session was rapidly drawing to a close. But a few days of it then remained. It would have been vain to act upon this resolution. It was a mere abstraction. Had it been adopted, it could have produced no effect; the money was wanted to place the country in a state of defense, and not a mere opinion that it ought to be granted. The chairman of the Committee on Foreign Relations, therefore, on the 28th of February, had this resolution laid upon the table, and gave notice that he would move an amendment to the fortification bill, appropriating $3,000,000, $1,000,000 to the Army, and $2,000,000 to the Navy, to provide for the contingent defense of the country.

It has been urged that, because the President, in his last annual message, has said that this contingent appropriation was inserted according to his views, some blame attaches to him from the mode of its introduction. Without pretending to know the fact, I will venture the assertion, that he never requested any member, either of this or the other branch of the Legislature, to make such a motion. He had taken his stand—he had left the whole subject to Congress. From this he never departed. If

the chairman of any committee, or any other member of the Senate or the House, called upon him to know his views upon the subject, he no doubt communicated them freely and frankly. This is his nature. Surely no blame can attach to him for having expressed his opinion upon this subject to any member who might ask it. It has been the uniform course pursued on such occasions.

On the 2d of March, the House of Representatives, by a unanimous vote, resolved that, in their opinion, the treaty with France, of the 4th July, 1831, should be maintained, and its execution insisted on. This was no party vote. It was dictated by a common American feeling, which rose superior to party. After this solemn declaration of the House, made in the face of the world, how could it be supposed they would adjourn without endeavoring to place the country in an attitude of defense? What, sir! the Representatives of the people, with an overflowing Treasury, to leave the country naked and exposed to hostile invasion, and to make no provision for our Navy, after having declared unanimously that the treaty should be maintained! Who could have supposed it?

On the 3d of March, upon the motion of the chairman of the Committee on Foreign Relations, [Mr. Cambreleng,] and in pursuance of the notice which he had given on the 28th of February, this appropriation of $3,000,000 was annexed as an amendment to the fortification bill. The vote upon the question was 109 in the affirmative and 77 in the negative. This vote, although not unanimous, like the former, was no party vote. The bill, thus amended, was brought to the Senate. Now, sir, let me ask, if this appropriation had proceeded from the House alone, without any message or any suggestion from the Executive, would not this have been a legitimate source? Ought such an appropriation to be opposed in the Senate, because it had not received Executive sanction? Have the Representatives of the people no right to originate a bill for the defense and security of their constituents, and their country, without first consulting the will of the President? For one, I shall never submit to any such slavish principle. It would make the Executive everything, and Congress nothing.

Had the indemnity been absolutely rejected by the Chambers, the two nations would have been placed in a state of defiance towards each other. In such a condition it was the right, nay more, it was the imperative duty, of the House of Representatives to make contingent preparation for the worst. The urgency of

the case was still more striking, because, in ten or eleven of the States, Representatives could not be elected until months after the adjournment, and therefore Congress could not have been assembled to meet any emergency which might occur.

But, sir, does it require a recommendation of the Executive, or a vote of the House of Representatives, to originate such an appropriation? Any individual Senator, or member of the House, may do it with the strictest propriety. Did the Senator from Delaware [Mr. Clayton] ask the approbation of the President, before he made the motion at the last session, which does him so much honor, to increase the appropriation for fortifications, $500,000? How did the amendments proposed by the Senator from Massachusetts [Mr. Webster] to the fortification bill of the last session originate? I presume from the Committee on Finance, of which he was the chairman. No doubt he conferred with the head of the proper executive Department, according to the custom in such cases; but still these appropriations of more than $400,000 had their origin in that committee. It was a proper legitimate source. Is, then, the ancient practice to be changed, and must it become a standing rule that we are to appropriate no money without the orders or the expressed wish of the Executive? I trust not.

The form of this appropriation has been objected to. I shall read it:

> *And be it further enacted*, That the sum of $3,000,000 be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to be expended, in whole or in part, under the direction of the President of the United States, for the military and naval service, including fortifications and ordnance, and increase of the Navy: *Provided*, Such expenditures shall be rendered necessary for the defense of the country, prior to the next meeting of Congress.

It has been urged that to grant the money in such general terms would have been a violation of the Constitution. I do not understand that the Senator from Massachusetts, [Mr. Webster,] at the present session, has distinctly placed it upon this ground. Other Senators have done so in the strongest terms. Is there anything in the Constitution which touches the question? It simply declares that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." Whether these appropriations shall be general or specific is left entirely, as it ought to have been, to the discretion of Congress. I admit that, *ex vi termini*, an appropriation of money must have

a reference to some object. But whether you refer to a class, or to an individual, to the genus or to the species, your appropriation is equally constitutional. The degree of specification necessary to make the law valid never can become a constitutional question. The terms of the instrument are as broad and as general as the English language can make them. In this particular, as in almost every other, the framers of the Constitution have manifested their wisdom and their foresight. Cases may occur and have occurred in the history of this Government, demanding the strictest secrecy—cases in which to specify would be to defeat the very object of the appropriation. A remarkable example of this kind occurs in the administration of Mr. Jefferson, to which I shall presently advert.

There are other cases in which from the very nature of things you cannot specify the objects of an appropriation without the gift of prophecy. I take the present to be a clear case of this description. The appropriation was contingent; it was to be for the defense of the country. How then could it have been specific? How could you foresee when, or where, or how the attack of France would be made? Without this foreknowledge, you could not designate when, or where, it would become necessary to use the money. This must depend upon France, not upon ourselves. She might be disposed to confine the contest merely to a naval war. In that event it would become necessary to apply the whole sum to secure us against naval attacks. She might threaten to invade Louisiana or any other portion of the Union. The money would then be required to call out the militia, and to march them and the regular Army to that point. Everything must depend upon the movements of the enemy. It might become necessary, in order most effectually to resist the contemplated attack, to construct steam frigates or steam batteries, or it might be deemed more proper to increase your ordinary Navy and complete and arm your fortifications. In a country where Congress cannot be always in session, you must in times of danger, grant some discretionary powers to the Executive. This should always be avoided when it is possible consistently with the safety of the country. But it was wise, it was prudent in the framers of the Constitution, in order to meet such cases, to declare in general terms that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." Not specific appropriations. The terms are general and unrestricted. If the amendment had appropriated

$1,000,000 to fortifications, the second million to the increase of the Navy, and the third to the purchase of ordnance and arms, it might have been found that a great deal too much had been appropriated to one object, and a great deal too little to another.

As a matter of expediency, as a means of limiting the discretion of executive officers, I am decidedly friendly to specific appropriations, whenever they can be made. I so declared in the debate at the last session. I then expressed a wish that this appropriation had been more specific; but upon reflection, I do not see how it could have been made much more so, unless we had possessed the gift of prophecy. But the Constitution has nothing to do with the question.

After all, I attached more value to specific appropriations before I had examined this subject, than I do at the present moment. Still I admit their importance. The clause which immediately follows in the Constitution is the true touchstone of responsibility. Although the appropriation may be general, yet "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." No matter in what language public money may be granted to the Executive, in its expenditure he is but the mere trustee of the American people, and he must produce to them his vouchers for every cent intrusted to his care. This constitutional provision holds him to a strict responsibility—to a responsibility much more severe than if Congress had been required in all cases to make specific appropriations.

How Senators can create a dictator, and give him unlimited power over the purse and the sword out of such an appropriation, I am at a loss to conceive. It is a flight of imagination beyond my reach. What, sir, to appropriate $3,000,000 for the military and naval defense of the country, in case it should become necessary during the recess of Congress, and at its next meeting to compel the President to account for the whole sum he may have expended, is this to create a dictator? Is this to surrender our liberties into the hands of one man? And yet gentlemen have contended for this proposition.

What has been the practice of the Government in regard to this subject? During the period of our two first Presidents appropriations were made in the most general terms. No one then imagined that this was a violation of the Constitution. When Mr. Jefferson came into power, this practice was changed. In his message to Congress of December 8, 1801, he says: "In

our care, too, of the public contributions intrusted to our discretion, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose *susceptible of definition." Susceptible of definition.* Here is the rule, and here is the exception. He treats the subject not as a constitutional question, but as one of mere expediency. In little more than two short years after this recommendation, Mr. Jefferson found it was necessary to obtain an appropriation from Congress in the most general terms. To have made it specific would necessarily have defeated its very object. Secrecy was necessary to success. Accordingly on the 26th February, 1803, Congress made the most extraordinary appropriation in our annals. They granted to the President the sum of $2,000,000 "for the purpose of defraying any extraordinary expenses which may be incurred in the intercourse between the United States and foreign nations." Here, sir, was a grant almost without any limit. It was co-extensive with the whole world. Every nation on the face of the earth was within the sphere of its operation. The President might have used this money to subsidize foreign nations to destroy our liberties. That he was utterly incapable of such conduct it is scarcely necessary to observe. I do not know that I should have voted for such an unlimited grant. Still, however, there was a responsibility to be found in his obligation under the Constitution to account for its expenditure. Mr. Jefferson never used any part of this appropriation. It had been intended for the purchase of the sovereignty of New Orleans and of other possessions in that quarter; but our treaty with France of the 30th April, 1803, by which Louisiana was ceded to us, rendered it unnecessary for him to draw any part of this money from the Treasury, under the act of Congress by which it had been granted.

Before the close of Mr. Jefferson's second term, it was found that specific appropriations in the extent to which they had been carried, had become inconvenient. Congress often granted too much for one object, and too little for another. This must necessarily be the case, because we cannot say beforehand precisely how much shall be required for any one purpose. On the 3d of March, 1809, an act was passed, which was approved by Mr. Jefferson, containing the following provision:

Provided, nevertheless, That, during the recess of Congress, the President of the United States may, and he is hereby authorized, on the application of the Secretary of the proper Department, and not otherwise, to direct, if in

his opinion necessary for the public service, that a portion of the moneys appropriated for a particular branch of expenditure in that Department, be applied to another [branch] of expenditure in the same Department; in which case, a special account of the moneys thus transferred, and of their application, shall be laid before Congress during the first week of their next ensuing session.

Is this act constitutional? If it be so, there is an end of the question. Has its constitutionality ever been doubted? It authorizes the President to take the money appropriated by Congress for one specific object and apply it to another. The money destined for any one purpose by an appropriation bill may be diverted from that purpose by the President, and be applied to any other purpose entirely different, with no limitation whatever upon his discretion, except that money to be expended by one of the Departments, either of War, or of the Navy, or of the Treasury, could not be transferred to another Department.

It is not my intention to cite all the precedents bearing upon this question. I shall merely advert to one other. On the 10th of March, 1812, Congress appropriated $500,000 "for the purpose of fortifying and defending the maritime frontier of the United States." This was in anticipation of the late war with Great Britain, and is as general in its terms, and leaves as much to Executive discretion, as the proposed appropriation of $3,000,000.

I trust, then, that I have established the position that this appropriation originated from a legitimate source—was necessary for the defense and honor of the country, and violated no provision of the Constitution. If so, it ought to have received the approbation of the Senate.

When the fortification bill came back to the Senate, with this appropriation attached to it by the House, the Senator from Massachusetts [Mr. Webster] instantly moved that it should be rejected. I feel no disposition to make any harsh observations in relation to that gentleman. I think, however, that his remark, that if the enemy had been thundering at the gates of the Capitol, he would have moved to reject the appropriation, was a most unfortunate one for himself. I consider it nothing more than a bold figure of speech. I feel the most perfect confidence that the gentleman is now willing to vote all the money which may be necessary for the defense of the country. Of the gentleman's sincerity in opposing this appropriation, I did not then, nor do I now, entertain a doubt. He was ardent and impassioned in his

manner, and was evidently in a state of highly excited feeling. Probably strong political prejudices may have influenced his judgment, without his knowledge. He thought that a high constitutional question was involved in the amendment, and acted accordingly.

When the bill returned again to the Senate, after we had rejected, and the House had insisted upon their amendment, the Senator immediately moved that we should adhere to our rejection. I well recollect, sir, that you [Mr. King, of Alabama, was in the chair] remarked at the time, that this was a harsh motion, and should it prevail, would be well calculated to exasperate the feelings of the House and to defeat the bill. You then observed that the proper motion would be to insist upon our rejection, and ask a conference; and that the motion to adhere ought not to be resorted to until all gentler measures had failed.

The Senator now claims the merit, and is anxious to sustain the responsibility, of having moved to reject this appropriation. He also asks in mercy, that when the expunging process shall commence, his vote, upon this occasion, may be spared from its operation.

For the sake of my country, and in undisguised sincerity of purpose, I declare, for the sake of the gentleman, I am rejoiced that the responsibility which he covets will, probably, not be so dreadful as we had just reason to apprehend. Had France attacked us, or should she yet attack us, in our present defenseless condition; should our cities be exposed to pillage, or the blood of our citizens be shed, either upon the land or the ocean; should our national character be dishonored, tremendous, indeed, would be the responsibility of the gentleman. In the event, he need not beseech us to spare his vote from the process of expunging. You might as well attempt to expunge a sunbeam. That vote will live for ever in the memory of the American people.

It was the vote of the Senate which gave the mortal blow to the fortification bill. Had they passed this appropriation of $3,000,000, that bill would now have been a law. Where it died, it is scarcely necessary to inquire. It was in mortal agony when the consultation of six political doctors was held upon it at midnight in our conference chamber, and it probably breathed its last on its way from that chamber to the House of Representatives for want of a quorum in that body.

Its fate, in one respect, I hope may yet be of service to the country. It ought to admonish us, if possible, to do all our

legislative business before midnight on the last day of the session. I never shall forget the night I sat side by side in the House of Representatives with the Senator from Massachusetts, [Mr. Webster,] until the morning had nearly dawned. The most important bills were continually returning from the Senate with amendments. It would have been in the power of any one member remaining in the House to have defeated any measure by merely asking for a division. This would have showed that no quorum was present. The members who still remained were worn down and exhausted, and were thus rendered incapable of attending to their duties. It was legislation without deliberation. I trust that this evil may be now corrected. Should it not, I do not know that, at the conclusion of a Congress, my conscience would be so tender as to prevent me from voting, as I have done heretofore, after midnight on the 3d of March.

I have one other point to discuss. I shall now proceed to present to the Senate the state of our relations with France, at the present moment, for the purpose of proving that we ought to adopt the resolutions of the Senator from Missouri, [Mr. Benton,] and grant all appropriations necessary for the defense of the country. For this purpose we must again return to Paris. The President's annual message of December, 1834, arrived in that city on the 8th of January—a day propitious in our annals. The attack upon the British troops on the night of the 23d December did not surprise them more than this message did the French Ministers. After the most patient endurance of wrongs for so many years, they seemed to be astounded that the President should have asserted our rights in such a bold and manly manner. That message, sir, will eventually produce the payment of the indemnity. What effect had it upon the character of our country abroad? Let Mr. Livingston answer this question. In writing to the Secretary of State, on the 11th of January, 1835, he says: "It has certainly raised us in the estimation of other Powers, if I may judge from the demeanor of their representatives here; and my opinion is, that as soon as the first excitement subsides, it will operate favorably on the councils of France." There was not an American in Paris on that day, who, upon the perusal of this message, did not feel the flush of honest pride of country mantling in his countenance.

On the 22d of November previous, Mr. Livingston was convinced that the King was sincere in his intention of urging the

execution of the treaty, and then had no doubt of the sincerity of his Cabinet. The Chamber assembled on the 1st of December; and, after an arduous struggle for two days against the opposition, victory perched upon the banner of the Ministers. They were thus securely seated in their places. On the 6th of December, Mr. Livingston again writes, that "the conversations I have had with the King and all the Ministers, convince me that now they are perfectly in earnest, and united on the question of the treaty, and that it will be urged with zeal and ability." In a few short days, however, a change came over their spirit. On the 22d of December, Mr. Livingston uses the following language, in writing to the Department of State: "My last dispatch (6th of December) was written immediately after the vote of the Chamber of Deputies had, as it was thought, secured a majority to the administration; and it naturally excited hopes which that supposition was calculated to inspire. I soon found, however, both from the tone of the Administration press and from the language of the King, and all the Ministers with whom I conferred on the subject, that they were not willing to put their popularity to the test on our question; it will not be made one on the determination of which the Ministers are willing to risk their portfolios. The very next day after the debate, the Ministerial gazette (*Des Debats*) declared that, satisfied with the approbation the Chamber had given to their system, it was at perfect liberty to exercise its discretion as to particular measures, which do not form *an essential part of that system;* and the communications I subsequently had with the King and the Ministers confirmed me in the opinion that the law for executing our convention was to be considered as one of those free questions. I combated this opinion, and asked whether the faithful observance of treaties was not *an essential part of their system;* and, if so, whether it did not come within their rule?"

The observance of treaties was not an essential part of their system! Victorious and securely fixed, the Ministers would not risk their place, in attempting to obtain from the Chambers the appropriation required to carry our treaty into execution. It would not be made a Cabinet question. It is evident they had determined to pursue the same course of delay and procrastination which they had previously pursued. But the message arrived, and it roused them from their apathy. All doubts which had existed upon the subject of making the payment of our indemnity a Cabinet question, at once vanished. We have never

heard of any such since; and it was not until some months after that the French Ministers thought of annexing any condition to this payment.

On the 13th of January, Mr. Livingston had a conference with the Count de Rigny. He then explained to him the nature of a message from our President to Congress. He compared it to a family council under the French law, and showed that it was a mere communication from one branch of our Government to another, with which a foreign nation had no right to interfere, and at which they ought not to take offense. They parted on friendly terms, and again met, on the same terms, in the evening, at the Austrian embassador's. Mr. Livingston was, therefore, much astonished when, about ten o'clock at night of the same day, he received a note from the Count, informing him that Mr. Serrurier, the French Minister at Washington, had been recalled, and that his passports were at his service. This seems to have been a sudden determination of the French Cabinet.

Now, sir, upon the presumption that France had been insulted by the message, this was the proper mode of resenting the insult. Promptly to suspend all diplomatic intercourse with the nation who had menaced her or questioned her honor, was a mode of redress worthy of her high and chivalrous character. The next impulse of wounded pride would be promptly to pay the debt which she owed, and release herself from every pecuniary obligation to the nation which had done her this wrong. These were the first determinations of the King's Ministers.

France has since been placed before the world by her rulers in the most false position ever occupied by a brave and gallant nation. She believes herself to be insulted, and what is the consequence? She refuses to pay a debt now admitted to be just by all the branches of her Government. Her wounded feelings are estimated by dollars and cents; and she withholds 25,000,000f., due to a foreign nation, to soothe her injured pride. How are the mighty fallen! Truly it may be said, the days of chivalry are gone. Have the pride and the genius of Napoleon left no traces of themselves under the constitutional monarchy? In private life, if you are insulted by an individual to whom you are indebted, what is the first impulse of a man of honor? To owe no pecuniary obligation to the man who has wounded your feelings—to pay him the debt instantly, and to demand reparation for the insult, or, at the least, to hold no friendly communication with him afterwards.

This course the King's Ministers had, at first, determined to pursue. The reason why they abandoned it, I shall endeavor to explain hereafter.

Mr. Livingston, in his letter to Mr. Forsyth of the 14th January, 1835, says: "The law, it is said, will be presented to-day, and I have very little doubt that it will pass. The ministerial phalanx, reinforced by those of the opposition, (and they are not a few,) who will not take the responsibility of involving the country *in the difficulties which they now see must ensue,* will be sufficient to carry the vote."

Did Mr. Livingston intend to say that France would be terrified into this measure? By no means. But, in the intercourse between independent States, there is a point at which diplomacy must end, and when a nation must either abandon her rights, or determine to assert them by the sword, or by such strong and decided measures as may eventually lead to hostilities. When this point is reached, it becomes a serious and alarming crisis for those to whom, on earth, the destiny of nations is intrusted. When the one alternative is war, either immediate or prospective, with all the miseries which follow in its train, and the other the payment of a just debt to an ancient ally and firm friend, who could doubt what must be the decision? Such was the position in which France stood towards the United States. Not only justice, but policy required the payment of the debt. In the event of war, or of a non-intercourse between the two nations, her wine-growers, her producers and manufacturers of silk, and all her other manufacturing interests, especially those of her southern provinces, would be vitally injured. The payment of $5,000,000 would be but a drop in the ocean, compared with the extent of their sufferings. In France, they then believed that the time for diplomacy—the time for procrastination had ended. The President's message had opened their eyes to the importance of the subject. It was under this impression that Mr. Livingston predicted that the bill would pass the Chambers. That it would have done so, without any condition, had Congress responded to the President's message, I do not say by authorizing reprisals, but by manifesting a decided resolution to insist upon the execution of the treaty, will, I think, appear abundantly evident hereafter.

The French Ministry having manifested their sensibility to the supposed insult, by recalling Mr. Serrurier, proceeded immediately to present the bill for the execution of the treaty to the

Chambers. In presenting it on the 15th January, Mr. Humann, the Minister of Finance, addressed the Chamber. His speech contains the views then entertained by the French Cabinet. I shall read an extract from it. He says:

"General Jackson has been in error respecting the extent of the faculties conferred upon us by the Constitution of the State; but if he has been mistaken as to the laws of our country, we will not fall into the same error with regard to the institutions of the United States. Now, the spirit and letter of those institutions authorize us to regard the document abovenamed, [the message,] as the expression of an opinion merely personal, so long as that opinion has not received the sanction of the other two branches of the American Government. The message is a Government act, which is still incomplete, and should not lead to any of those determinations, which France is in the habit of taking in reply to a threat or an insult."

The French Ministry, at that time, considered the President's message merely his personal act, until it should receive the sanction of Congress. They, then, had not dreamt of requiring an explanation of it, as the only condition on which they would pay the money. This was an after-thought. The bill presented by Mr. Humann merely prescribed that the payment should not be made "until it shall have been ascertained that the Government of the United States has done nothing to injure the interests of France." This bill was immediately referred to a committee, of which Mr. Dumon was the chairman. On the 28th of March, he reported it to the Chamber, with a provision, that the money should not be paid, if the Government of the United States shall have done anything "contrary to the dignity and interests of France." Still we hear nothing of an explanation of the message being made a condition of the payment of the money. The clauses in the bill to which I have adverted, were evidently inserted to meet the contingency of reprisals having been sanctioned by Congress.

The debate upon the bill in the Chamber of Deputies commenced on the 9th of April, and terminated on the 18th. On that day, General Valazé proposed his amendment, declaring that "the payments in execution of the present law cannot be made until after the French Government shall have received satisfactory explanations with regard to the message of the President of the United States, dated the 2d December, 1834."

The Duke de Broglie, the Minister of Foreign Affairs, accepted this amendment. I shall read his remarks on this occasion. He says: "The intention of the Government has always been conformable with the desire expressed by the author of the amendment which is now before the Chamber, (*great agitation;*) the Government has always meant that diplomatic relations should not be renewed with the Government of the United States until it had received satisfactory explanations. The Government, therefore, does not repulse the amendment itself." After this, on the same day, the bill passed the Chamber by a vote of 289 to 137.

Well might the Chamber be agitated at such an annunciation from the Minister of Foreign Affairs. Why this sudden change in the policy of the French Government? The answer is plain. Congress had adjourned on the 4th of March, without manifesting by their actions any disposition to make the fulfillment of the treaty a serious question. Whilst our Treasury was overflowing, they had refused to make any provision for the defense of the country. They had left the whole coast of the United States, from Maine to Georgia, in a defenseless condition. The effect upon the French Chamber and the French people was such as might have been anticipated. To prove this, I shall read an extract from a speech delivered by Mr. Bignon, one of the Deputies, on the 10th April. I select this from many others, because it contains nothing which can be offensive to any Senator. It will be recollected that Mr. Bignon is the gentleman who had been more instrumental in defeating the bill at the previous session than any other member:

"President Jackson's message has astonished them (the Americans) as well as us; they have seen themselves thrown by it into a very hazardous situation. What have they done? They are too circumspect and clear-headed to express, by an official determination, their disapproval of an act which, in reality, has not received their assent. Some of them, for instance Mr. Adams, in the House of Representatives, may indeed, from a politic patriotism, have even eulogized the President's energy, and obtained from the Chamber the expression that the treaty of 1831 must be complied with; but at a preceding sitting the same member took pains to declare that he was not the defender of a system of war; he proclaimed aloud that the resolution adopted by the Senate was an expedient suggested by prudence, and he thought the House of Representatives should pursue the same course.

Gentlemen, the American Legislature had to resort to expedients to get out of the embarrassing dilemma in which the President's message had placed them; and they acted wisely."

From the conduct of Congress, the French Chambers were under the impression that the people of the United States would not adopt any energetic measures to compel the fulfillment of the treaty. They had no idea that the nation would sustain the President in his efforts. They had reason to believe that he was left almost alone. They appear ever since to have acted under this delusion. According to the impression of Mr. Bignon, the nation was astounded at President Jackson's message. This is the true reason why the Ministry accepted the amendment requiring President Jackson to make an explanation.

The best mode of obtaining justice from the powerful as well as from the weak—the best mode of elevating this nation to the lofty position she is destined to occupy among the nations of the earth—the best mode of preventing war and preserving peace, is to stand up firmly for our rights. The assertion of these rights, not by threats, but boldly, manfully, and frankly, is the surest method of obtaining justice and respect from other nations.

At so early a day as the 29th of January, Mr. Livingston had addressed a note to the Duke de Broglie, distinctly disavowing an intention, on the part of the President, by his message, to intimidate France, or to charge the French Government with bad faith. On the 25th of April, in another letter to the Duke, he communicated to him the President's official approbation of his former note. In this last letter, he reiterates his explanations, and assures the Duke, that whilst the President intended to use no menace, nor to charge any breach of faith against the King's Government, he never could and never would make an explanation of his message, on the demand of a foreign Government. This letter would, of itself, be sufficient to give its author a high rank, not only among the diplomatists, but the statesmen of his country. The sentiments it contains were unanimously approved by the American people. Although it was received by the Duke before the bill had been acted upon by the Chamber of Peers, it produced no effect upon the French Ministry. The bill was finally passed, and obtained the sanction of the King, in a form requiring the President to explain his message before the money could be paid.

This state of facts distinctly raises the important question,

whether a President of the United States can be questioned by a foreign Government for anything contained in a message to Congress? The principle that he cannot has already been firmly established by the practice of our Government. Even in our intercourse with France, in former times, the question has been settled. This principle results from the very nature of our institutions. It must ever be maintained inviolate. Reverse it, and you destroy the independent existence of this Republic, so far as its intercourse with foreign nations is concerned.

The Constitution requires that the President of the United States "shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." This information is intended not only for the use of Congress, but of the people. They are the source of all power, and from their impulse all legitimate legislation must proceed. Both Congress and the people must be informed of the state of our foreign relations by the Executive. If the President cannot speak freely to them upon this subject; if he cannot give them all the information which may be necessary to enable them to act, except under the penalty of offending a foreign Government, the Constitution of the United States, to this extent, becomes a dead letter. The maintenance of this principle is an indispensable condition of our existence, under the present form of Government.

If we are engaged in any controversy with a foreign nation, it is not only the right, but it is the imperative duty of the President to communicate the facts to Congress, however much they may operate against that nation. Can we, then, for a single moment, permit a foreign Government to demand an apology from the President for performing one of his highest duties to the people of the United States?

Let us put an extreme case. Suppose the President, after giving a history of our wrongs to Congress, recommends not merely a resort to reprisals, but to war against another nation. Shall this nation, which has inflicted upon us injury after injury, be permitted to change her position, to cancel all our claims for justice, and to insist that we have become the aggressors, because a resort to arms has been recommended? I feel the most perfect confidence that not a single Senator will ever consent to yield this position to France or to any other nation. I need not labor this question. The subject has been placed in the clearest and strong-

est light by Mr. Livingston, in his letter to the Duke de Broglie of the 25th of April.

If any possible exception to the rule could be tolerated, surely this would not present the case. The Duke de Broglie himself, in his letter to Mr. Pageot, is constrained to admit that there is not a single offensive sentence respecting France in the message; but yet he complains of the general effect of the whole.

With a full knowledge, then, that the President could not, would not, dare not explain his message, on the demand of any foreign Government, the Duke de Broglie addresses his famous letter to the Chargé d'Affaires of France, at Washington. It bears date at Paris, on the 17th June, 1835. Before I proceed to make any remarks upon this letter, I wish to bring its character distinctly into the view of the Senate. It commences by declaring, in opposition to the principle that the President of the United States cannot be called upon by a foreign Government to make explanations of a message to Congress; that, "by virtue of a clause inserted in the article first, by the Chamber of Deputies, the French Government must defer making the payments agreed upon, *until that of the United States shall have explained the true meaning and real purport of diverse passages inserted by the President of the Union in his message at the opening of the last session of Congress, and at which all France, at the first aspect, was justly offended.*"

It proceeds still further, and announces that, "the Government having discovered nothing in that clause at variance with its own sentiments, or the course it had intended to pursue, the project of law thus amended on the 18th of April, by the Chamber of Deputies, was carried, on the 27th, to the Chamber of Peers."

The Duke, after having thus distinctly stated that an explanation of the message was required as a condition of the payment of the money, and after presenting a historical sketch of the controversy, then controverts, at considerable length, the position which has been maintained by Mr. Livingston, that the President could not be questioned by a foreign Government for anything contained in a message to Congress. He afterwards asserts, in the broadest terms, that the explanations which had been voluntarily made by Mr. Livingston, and sanctioned by the President, were not sufficient.

In suggesting what would satisfy France, he says, "we do not here contend about this or that phrase, this or that allegation, this or that expression; we contend about the intention itself,

which has dictated that part of the message." And, again, speaking of Mr. Livingston's letters of the 29th January, and 25th April, he adds:

"You will easily conceive, sir, and the Cabinet of Washington will, we think, understand it also, that such phrases incidentally inserted in documents, the purport and tenor of which are purely polemical, surrounded, in some measure, by details of a controversy which is besides not always free from bitterness, cannot dispel sufficiently the impression produced by the perusal of the message, nor strike the mind *as would the same idea expressed in the term single, positive, direct, and unaccompanied by any recrimination concerning facts or incidents no longer of any importance.* Such is the motive which, among many others, has placed the French Government in the impossibility of acceding to the wish expressed by Mr. Livingston towards the conclusion of his note of the 29th of April by declaring (to the Chamber of Peers, probably) that previous explanations given by the Minister of the United States, and subsequently approved by the President, had satisfied it."

After having thus announced the kind of explanation which would be expected, he states, that the French Government, "in pausing then for the present, and waiting for the fulfillment of those engagements to be claimed, (the engagement of the treaty,) and expecting those to be claimed *in terms consistent with the regard due to it,* it is not afraid of being accused—nor France, which it represents—of being accused of appreciating national honor by any number of millions which it could withhold as a compensation for any injury offered to it." The letter concludes by authorizing Mr. Pageot to read it to Mr. Forsyth, *and if he be desirous, to let him take a copy of it.*

It is impossible to peruse this letter, able and ingenious as it is, without at once perceiving that it asks what the President can never grant without violating the principle, that France has no right to demand an explanation of his message.

On the 11th of September, Mr. Pageot, the French Chargé d'Affaires, called at the Department of State, and read this dispatch to Mr. Forsyth. The latter did not think proper to ask a copy of it; and for this he has been loudly condemned. In my judgment, his conduct was perfectly correct.

No objection can be made to this indirect mode of communication with the Government of the United States adopted by the Duke. It is sanctioned by diplomatic usage. The rules,

however, which govern it, are clearly deducible from its very nature. It is a mere diplomatic feeler thrown out to ascertain the views of another Government. The Duke himself justly observes, that its object is "to avoid the irritation which might involuntarily arise from an exchange of contradictory notes in a direct controversy."

Had Mr. Forsyth asked and received a copy of this dispatch, he must have given it an answer. Respect for the source from which it proceeded would have demanded this at his hand. If this answer could have been nothing but a direct refusal to comply with the suggestion of the French Government, then he was correct in not requesting leave to take a copy of it. Why was this the case? Because it would have added to the difficulties of the question already sufficiently numerous, and would have involved him in a direct controversy, which it is the very object of this mode of communication to prevent. This is the reason why it was left, by the dispatch itself, within his own option whether to request a copy or not, and his refusal to make this request ought to have given no offense to the French Government.

Now, sir, what answer could he have given to this communication, but a direct refusal? Had not the Duke been fully apprised before he wrote this dispatch, that it could receive no other answer? It required explanations as a condition of the payment of the money, which he had been informed the President could never make. On this ground, then, and for the very purpose of avoiding controversy, the conduct of Mr. Forsyth was correct.

But there is another reason to justify his conduct, which, I think, must carry conviction to every mind. The President proposed, in his annual message, voluntarily to declare, that he had never intended to menace France, or to impeach the faith of the French Government. This he has since done in the strongest terms. As offense was taken by the French Government at the language of a former message, it was believed that such a declaration in a subsequent message would be, as it ought to be, entirely satisfactory to France. Had Mr. Forsyth taken a copy of this dispatch, and placed it among the archives of the Government, how could the President have made, consistently with his principles, the disclaimer which he has done? A demand for an explanation would thus have been interposed by a foreign Government, which would have compelled him to remain silent. The refusal of Mr. Forsyth to ask a copy of the dispatch, left the

controversy in its old condition; and, so far as our Government was concerned, left this letter from the Duke de Broglie to Mr. Pageot as if it never had been written. The President, therefore, remained at perfect liberty to say what he thought proper in his message.

If this letter had proposed any reasonable terms of reconciling our difficulties with France—if it had laid any foundation on which a rational hope might have rested that it would become the means of producing a result so desirable, it would have been the duty of Mr. Forsyth to request a copy. Upon much reflection, however, I must declare that I cannot imagine what good could have resulted from it in any contingency; and it might have done much evil. Had it prevented the President from speaking as he has done in his last message concerning France, it might have involved the country in a much more serious misunderstanding with that Power than existed at the present moment.

I should be glad to say no more of this dispatch, if I could do so consistently with a sense of duty. Mr. Pageot did not rest satisfied with Mr. Forsyth's omission to request a copy of it, as he ought to have done. He deemed it proper to attempt to force that upon him which the dispatch itself had left entirely to his own discretion. Accordingly, on the 1st of December last, he inclosed to him a copy. On the 3d, Mr. Forsyth returned it with a polite refusal. On the 5th, Mr. Pageot again addressed Mr. Forsyth, and avowed that his intention in communicating the document, "was to make known the real disposition of my Government to the President of the United States, *and through him to Congress and the American people.*" Thus it is manifest, that his purpose was to make the President the instrument by which he might appeal to the American people against the American Government. After he had failed in this effort, what is his next resort? He publishes this dispatch to the people of the United States through the medium of our public journals. I now hold in my hand the number of the Courrier des Etats Unis, of the 20th of January, a journal published in New York, which contains the original dispatch in the French language. In a subsequent number of the same journal, of the 24th January, there is an editorial article on the subject of the President's special message to Congress, and of this dispatch, of a part of which I shall give my own translation. It is as follows:

"Our last number contained the dispatch of M. the Duke

de Broglie to the Chargé d'Affaires of France at Washington, concerning which the Senate had demanded such explanations as were in the power of the Executive. On the same day, the late message of the President of the United States, which had been expected with so much impatience and anxiety, arrived at New York. To this document are annexed many letters of the Duke de Broglie, of Mr. Forsyth, and of Mr. Pageot, which will be read with great interest. We give a simple analysis of the least important, *and an exact copy of those which have been written originally in French.*

"The public attention was first occupied with this letter of the Minister of Foreign Affairs, which was known here some hours before the message of the President of the United States; and if some journals of the Government have found this publication unseasonable, *made by the Legation of France according to the orders which it had received,* nobody, at least, has been able to deny the talent, the moderation, and the force of reasoning which have presided at its preparation."

By whom was the Legation of France ordered to publish this dispatch? Who alone had the power of issuing such an order? The French Government. Against this positive language, I can still scarcely believe that the Duke de Broglie has given an order so highly reprehensible.

The publication of this dispatch was an outrage upon all diplomatic usage. It ought to have been intended as the harbinger of peace, and not of renewed controversy. From its very nature it was secret and confidential. If not received, it ought to have been as if it never had existed. Upon any other principle, it would aggravate the controversy which such communications are always intended to prevent. It has now been diverted from its natural purpose by the French Legation, and has been made the subject of an appeal by France to the American people against their own Government. It has thus greatly increased the difficulties between the two countries. It has proclaimed to the world that France requires, from the President of the United States, an apology of his message, as an indispensable condition of the execution of our treaty. It has, therefore, rendered it much more difficult for her to retract.

The true meaning of this dispatch is now rendered manifest to the most sceptical. The Duke de Broglie, in his interview with Mr. Barton, on the 12th October last, has placed his own construction upon it. The apology which he then required from

the President contains his own commentary upon this dispatch. I need not read the history of that interview to the Senate, to prove that I am correct in this assertion. It must be fresh in the recollection of every Senator.

Considered as an appeal to the American people against their own Government, the publication of this dispatch deserves still more serious consideration. Foreign influence, in all ages, has been the bane of republics. It has destroyed nearly all of them which have ever existed. We ought to resist its approaches on every occasion. In the very infancy of our existence as a nation, a similar attempt was made by France. It was then repulsed as became a nation of freemen. The present attempt will have the same effect on the American people. It will render them still more firm and still more united in the cause of their country.

Of Mr. Barton's recall, I need say but little. It was the direct consequence of the refusal of France to execute the treaty, without an apology from the President of his message.

Diplomatic relations between the two countries had been first interrupted by France. On the subject hear what the Count de Rigny said in his *exposé* read to the Chamber of Peers, on the 27th April last, on presenting the bill for the execution of our treaty. I give my own translation:

"You know the measure which the Government of the King adopted at the very instant when the message, presented by the President of the Union at the opening of the last Congress, arrived in Europe. You know that, since that time, a similar measure has been adopted by President Jackson himself. The two Ministers, accredited near the two Governments, are reciprocally recalled; the effect of this double recall is at this moment, if not to interrupt, in all respects, the diplomatic communications between the two States, at least to interrupt them in what regards the treaty of the 4th July. If these relations ought to be renewed—and we doubt not that they ought—it is not for us hereafter to take the initiative."

On the 5th of June, the President had officially sanctioned the explanations which had been made to the French Government by Mr. Livingston, in his letter of the 25th of April, as he had previously sanctioned those which had been made by the same gentleman, in his note of the 29th of January. These were considered, by the President, amply sufficient to satisfy the susceptible feelings of France. In order to give them full time to pro-

duce their effect, and to afford the French Ministry an ample opportunity for reflection, he delayed sending any orders to demand the money secured by the treaty, until the middle of September. On the 14th of that month, Mr. Barton was instructed to call upon the Duke de Broglie, and request to be informed, what were the intentions of the French Government in relation to the payment of the money secured by the treaty. He executed these instructions on the 20th of October. The special message has communicated to us the result. "We will pay the money," says the Duke de Broglie, "when *the Government of the United States is ready, on its part, to declare to us, by addressing its claim to us officially in writing, that it regrets the misunderstanding which has arisen between the two countries; that this misunderstanding is founded on a mistake; that it never entered into its intention to call in question the good faith of the French Government, nor to take a menacing attitude towards France;*" and he adds, "*if the Government of the United States does not give this assurance, we shall be obliged to think that this misunderstanding is not the result of an error.*"

Is there any American so utterly lost to those generous feelings, which love of country should inspire, as to purchase five millions with the loss of national honor? Who, for these or any number of millions, would see the venerable man, now at the head of our Government, bowing at the footstool of the throne of Louis Philippe, and, like a child prepared to say its lesson, repeating this degrading apology? First, perish the five millions!—perish a thousand times the amount! The man whose bosom has been so often bared in the defense of his country will never submit to such degrading terms. His motto has always been, death before dishonor.

Why then, it may be asked, have I expressed a hope, a belief, that this unfortunate controversy will be amicably terminated, when the two nations are now directly at issue? I will tell you why. This has been called a mere question of etiquette; and such it is, so far as France is concerned. She has already received every explanation which the most jealous susceptibility ought to demand. These have been voluntarily tendered to her.

Since the date of the Duke de Broglie's letter to Mr. Pageot of the 17th June, we have received from the President of the United States his general message at the commencement of the session, and his special message on French affairs. Both these documents disclaim, in the strongest terms, any intention to

menace France, or to impute bad faith to the French Government, by the message of December, 1834. Viewing the subject in this light; considering that, at the interview with Mr. Barton, the Duke could not have anticipated what would be the tone of these documents, I now entertain a strong hope that the French Government have already reconsidered their determination. If a mediation has been proposed and accepted, I cannot entertain a doubt as to what will be the opinion of the mediator. He ought to say to France, you have already received all the explanations, and these have been voluntarily accorded, which the United States can make, without national degradation. With these you ought to be satisfied. With you, it is a mere question of etiquette. All the disclaimers which you ought to desire, have already been made by the President of the United States. The only question with you now is not one of substance, but merely whether these explanations are in proper form; but in regard to the United States the question is far different. What is with you mere etiquette, is a question of life and death to them. Let the President of the United States make the apology which you have dictated; let him once admit the right of a foreign Government to question his messages to Congress, and to demand explanations of any language at which they may choose to take offense, and their independent existence as a Government, to that extent, is virtually destroyed.

We must remember that France may yield with honor; we never can without disgrace. Will she yield? That is the question. I confess I should have entertained a stronger belief that she would, had she not published the Duke's letter to M. Pageot as an appeal to the American people. She must still believe that the people of this country are divided in opinion in regard to the firm maintenance of their rights. In this she will find herself entirely mistaken. But should Congress, at the present session, refuse to sustain the President by adopting measures of defense, should the precedent of the last session be followed for the present year, then I shall entertain the most gloomy forebodings. The Father of his Country has informed us that the best mode of preserving peace is to be prepared for war. I firmly believe, therefore, that a unanimous vote of the Senate in favor of the resolutions now before them, to follow to Europe the acceptance of the mediation, would, almost to a certainty, render it successful. It would be an act of the soundest policy as well as of the highest patriotism. It would prove, not that we intend to menace

France, because such an attempt would be ridiculous, but that the American people are unanimous in the assertion of their rights, and have resolved to prepare for the worst. A French fleet is now hovering upon our coasts; and shall we sit still, with an overflowing Treasury, and leave our country defenseless? This will never be said with truth of the American Congress.

If war should come, which God forbid; if France should still persist in her effort to degrade the American people in the person of their Chief Magistrate, we may appeal to Heaven for the justice of our cause, and look forward with confidence to victory from that Being in whose hands is the destiny of nations.

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